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發展局
工務科

香港花園道美利大廈



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12 December 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 (the Bill) on 2 December 2011, we provide the relevant information in the ensuing paragraphs.

Notification of Appeal Board Decision

Section 70 of the Interpretation and General Clauses Ordinance (Cap. 1) states that where no time is prescribed or allowed within which any thing shall be done, such thing shall be done without unreasonable delay, and as often as due occasion arises. Thus, the appeal board under the Bill shall notify the parties to the hearing of the decision without **unreasonable delay**, and as often as due occasion arises. This is in line with the arrangement in some other legislation.

The term "suffer" under Clause 126(2)(c) of the Bill

The term "suffer" serves a particular purpose in clause 126(2)(c) of the Bill. It is intended to make clear that the provision covers also a passive conduct. Furthermore, we have made reference to other legislation and found that it was not uncommon to use "suffer or permit" (容受或准許) in similar context in other legislation¹. We therefore would like to maintain the term for consistency consideration.

Need for "access to" in Clauses 129(2)(a) and 131(2)(a) of the Bill

We have reviewed clause 129(2)(a)(for incident investigation) and clause 131(2)(a)(for routine checking) of the Bill and come to the view that from the policy angle, it is necessary for the enforcement officer to retain the power to require access to a lift or escalator in order to carry out the examination works.

Clause 135(3)(b) of the Bill

The purpose of clause 135(3)(b) of the Bill is to make clear the extent of force that is allowed to be used for gaining entry (forced entry) into any premises authorized to be entered under a warrant issued under clause 135(1). The principle is that the force used must be reasonable in the circumstances of the case. This message is important to both the enforcement side and the affected person and should be made clear in the provision. In view of the reason stated above, we consider that clause 135(3)(b) shall be maintained.

Clauses 132(2), 133(2), 134(2) and 135(2) of the Bill

Clause 132(2), 133(2), 134(2) or 135(2) of the Bill is applicable to a warrant issued under clause 132, 133, 134 or 135 of the Bill respectively. As a warrant issued under clause 132, 133, 134 or 135 of the Bill by the court may not specify the time at which the warrant is to cease to have effect, it is advisable to have clauses 132(2), 133(2), 134(2)

¹ Recent examples are section 49 of the Anti-Money Laundering and Counter-Terrorist financing (Financial Institutions) Ordinance (Cap. 615), section 51 of the Financial Reporting Council Ordinance (Cap. 588), section 46 of the Deposit Protection Scheme Ordinance (Cap. 581), section 50 of the Clearing and Settlement Systems Ordinance (Cap 584), and section 378 of the Securities and Futures Ordinance (Cap. 571).

and 135(2) of the Bill which make clear that if the warrant concerned does not specify the time at which or the date on which the warrant is to cease to have effect, the warrant would have effect until the purposes for which the entry is necessary have been satisfied. Those provisions are not applicable to a warrant issued under any other provisions or legislation.

Power to obtain documents and information

After revisiting clause 128 of the Bill, we consider that there is sufficient power for the Director of Electrical and Mechanical Services (the Director) to obtain the necessary document or information from a person for the purposes of the Bill.

According to clause 128 of the Bill, 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 purpose of performing any function of the Director under the Bill, the Director may by notice in writing request the person to produce or provide the document or information. The Director is empowered to specify in the notice the time and place at which any document or information is to be produced or provided. The person is required to produce or provide the concerned document or information irrespective of the location. There are related sanctions for failure to comply with the provision.

In addition, according to clause 128, the Director is empowered to specify in the notice the manner and form in which any document or information is to be produced or provided. Therefore, in case the concerned document or information is protected by password, the Director can require the production or provision of the concerned document or information in a legible form.

Registered Lift Contractor to Post a Notice of Lift Incident

In LegCo Papers **CB(1)402/11-12(01)** and **CB(1)467/11-12(01)** dated 21 and 29 November 2011 respectively, we have provided our views on Members' request to impose a provision under clause 40 of the Bill requiring a registered lift contractor to post a notice after the occurrence of any lift incident for the purposes of informing affected users of the nature of the relevant incident and the follow-up actions that have been and are being undertaken by the contractor. In view of Members' further request, we will re-consider the request and will provide our response to

the Bills Committee in due course.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Jimmy PM Chan', written in a cursive style.

(Jimmy PM CHAN)
for Secretary for Development

c.c.

Director of Electrical and Mechanical Services (Attn: Mr Alfred SIT)
Law Officer (Civil Law), Department of Justice (Attn: Ms Bonnie CHAU)
Law Draftsman, Department of Justice (Attn: Ms Frances HUI and Ms Angie LI)