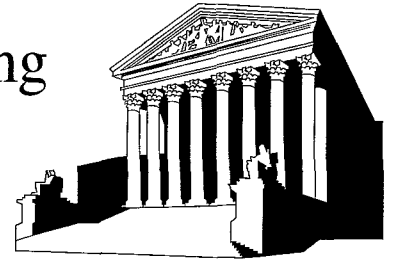


New Safety Features and Scope regarding Lifts and Escalators Regulation



Significant amendments to the Lifts and Escalators (Safety) Ordinance have been proposed that seek to both widen the scope of the existing legislation as well as promote new safety features. This month J A McInnis examines some of the more interesting aspects of the proposals.

Background

Hong Kong is built, and many of its inhabitants likely travel up and down, as much as they travel back and forth in their daily comings and goings. Indeed with some 40,000 lifts and escalators installed in Hong Kong this may be an understatement. Separate legislation on the safety of both these lifts and escalators dates back to 1960.¹ The Buildings Ordinance independently imposes requirements to ensure safety standards in carrying out lift or escalator works.² The Electrical and Mechanical Services Department “EMSD” carries out inspections, maintains a register on lift and escalator engineers and contractors, monitors their performance, and enforces a Code of Practice on the Design and Construction of Lifts and Escalators.³ However, while these steps and others have been taken, high profile accidents as well the Garley building fire have prompted new calls for stricter measures. The current amendments answer in part those calls.

Scope

The scope of the current legislation is already quite broad. The short title stipulates it is “to provide for the design and construction, and the maintenance in safe working order of lifts and escalators, for the examination and testing thereof and for matters connected with the purposes aforesaid”. These objectives have given rise to lengthy legislation in some six (or 10) parts covering 50 sections. The substance of the legislation addresses registration of engineers and contractors, examination and testing, and maintenance. Other parts of the legislation address setting up an appeal board, service lifts, codes of practice and offences. Some of the more significant new features, which broaden the scope of the legislation, may be set out.

* The new provisions extend the operation of the legislation to all types of “mechanized vehicle parking systems” which have not previously been regulated. A short definition is included of the systems intended to be covered but it does not clearly indicate the drafters’ intention to exclude systems that do not pass through the floor.⁴

* The new provisions upgrade the qualifications that are required for registration. In particular, working experience

alone will now no longer be sufficient for registration although those who have previously been registered on this basis will remain eligible.

- * Most significant perhaps are the changes to the appointment procedures for members of the disciplinary board. Hence in future it will no longer be the Director of the EMSD who will make the appointments but the relevant institutions concerned. In addition the previous power of direct referral of a disciplinary matter to the disciplinary board by the Director held will be removed and the Director will instead have to refer the disciplinary matter first to the Secretary for Planning, Environment and Lands who will then begin the disciplinary process. Under the new provisions the Director will no longer be represented on the disciplinary board either as chairman or member. Public officers will no longer be eligible to serve on the board as well.
- * A new provision will replace the minimal previous requirement for a contractor to only obtain a certificate from the manufacturer prior to installation with a requirement for the contractor to obtain the Director’s approval for a lift or escalator unless the brand and model have been previously approved by him.
- * The amendments add an important new obligation upon contractors to ensure that the design and construction of lifts and escalators comply with new standards. Thus in future all new lifts and escalators will have to either satisfy existing or prospective Codes of Practice or the Director in terms of their design and construction. In future, approval will have to be sought prior to lift works or escalator works being carried out if the work is not in accordance with existing or prospective Codes. In fact when granting approvals the Director may impose conditions which must be satisfied. Failing to seek prior approval, or follow the approved proposed design and construction, will be an offence.
- * Provisions regarding maintenance and examination of lifts and escalators and the testing of safety equipment will be extended to service lifts.

Discussion

It can be seen that the legislation is being both broadened; for example by the extension to mechanized vehicle parking systems, as well as deepened; for example by bringing service lifts within the scope of the more rigorous regime for maintenance, examination and testing applying to passenger lifts. Numerous other smaller amendments to the legislation also reinforce this conclusion.


The changes being introduced follow general trends under other legislation. In particular the move toward greater independence in the appointment process regarding discipline matters reflects similar changes; for instance, under the Buildings Ordinance, which forced the Building Authority to step back from appointments and involvement in the disciplinary process as well. Significantly, the changes come following reported judgments involving Otis Elevator Co (HK) Ltd, "Otis".⁵ Several years ago it may be recalled a member of the public died falling down a lift shaft while work was being done by Otis. This resulted in disciplinary proceedings being taken by the Director of the EMSD under section 11E(1) of the Lifts and Escalators (Safety) Ordinance. The chairman appointed to hear the proceedings was an assistant director in the EMSD. Otis objected and eventually challenged the appointment and procedures under the Bill of Rights Ordinance. Although Otis was successful in its challenge at trial it lost on appeal. Thus the Director retained his significant presence in the disciplinary process. Notwithstanding this win by government it must have been felt that greater independence and transparency were

needed in the discipline and appeal process under the Ordinance. Hence these changes furthering both ends have been introduced and are desirable for the same reasons. In summary the changes increase obligations on engineers and contractors as well as the scope of the role for the EMSD. However the changes are offset by distancing the EMSD from the discipline and appeal process and thus a better balance is struck.

- 1 *Lifts and Escalators (Safety) Ordinance, (1960), Cap 327.*
- 2 *See eg section 10(1) Buildings Ordinance.*
- 3 *The Electrical and Mechanical Services Department enforces the Lifts and Escalators (Safety) Ordinance, Cap 327; as well as the Builders' Lifts and Tower Working Platforms Ordinance, and the Aerial Ropeways Ordinance; monitors the Peak Tram under the Peak Tramway Ordinance, and amusement rides under the Amusement Rides (Safety) Ordinance; and inspects cars under the Tramways Ordinance.*
- 4 *See explanatory memorandum to the Lifts and Escalators (Safety) (Amendment) Bill 1998, para 2 LS No 3, 38 of 1998.*
- 5 *Re Otis Elevator Co (HK) Ltd [1994] 1 HKC 740 (HC); and R v Lift Contractors' Disciplinary Board, ex p Otis Elevator Co (HK) Ltd (1995) 5 HKPLR 78 (CA).*



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