

# EXECUTIVE SUMMARY

## Direct Investigation on Regulatory System of Lifts

### Background

In the wake of lift incidents since October 2008 and amid grave public concern, The Ombudsman decided to initiate a direct investigation into the regulatory system of lifts administered by the Electrical and Mechanical Services Department (“EMSD”) on 15 January 2009. The ambit of the investigation includes:

- (a) lift examination requirements under the Lifts and Escalators (Safety) Ordinance (Cap 327);
- (b) EMSD’s monitoring measures;
- (c) the effectiveness of the regulatory framework; and
- (d) possible areas for improvement.

### Regulation of Lifts in Hong Kong

2. The regulatory framework for lifts rests on three legs.

#### *(a) Statutory certification system*

3. A lift owner has to arrange for lift examination by a registered lift engineer (“RE”) at least once every 12 months. If examination results are satisfactory, the RE, through a registered lift contractor (“RC”) who normally is his employer, will issue a lift certificate. The lift owner then delivers the certificate to EMSD for endorsement, after which it is returned for conspicuous display in the lift. These steps are subject to stringent time-lines. EMSD can direct the lift owner to conduct an examination of the lift by issuing a Form 9 order and follow up by issuing a Form 16 order to prohibit the use of the lift.

#### *(b) Registration of Contractors and Engineers*

4. Only contractors and lift engineers registered with EMSD (i.e. REs and RCs) are eligible to carry out repair and maintenance of lifts. EMSD runs an administrative demerit point system (Performance Monitoring Points System or “PMPS”): a RC or RE may be referred to a disciplinary board which can impose sanctions, including the removal of a RC or RE from the register.

#### *(c) Direct Inspection and Enforcement Action*

5. EMSD conducts inspections of lifts and issues warning letters for breach found under PMPS. However, from 2005 to 2008, EMSD issued only two Form 9 orders and considered referring only one case to the disciplinary board.

## **EMSD's Improvement Measures**

6. After the lift incidents, EMSD has taken immediate measures to strengthen the regulatory regime. The measures include legislative review for RE registration and level of penalties, stepping up lift inspections, surprise inspections to verify whether the RE had examined the lifts personally, ensuring speedy announcement of serious lift incidents, disclosing RC performance through a performance rating system and enhance public education on lift safety.

7. Since commencement of our investigation, EMSD has taken further measures. These include early reminders to RCs and/or lift owners for lift examination, early site inspections in overdue cases, timely issue of orders for lift examination, investigating cases where lift certificate submission is overdue for 12 weeks, warning RCs and REs on repeated late examination of lifts, and notifying lift owners of non-compliance items found by EMSD in addition to according demerit points to RCs and REs.

## **Problems identified and Our Observations**

8. We commend EMSD's increase in direct inspection and firm enforcement following the spate of lift incidents. However, Government alone cannot, and should not, assume total responsibility for the maintenance and safety of each and every lift in Hong Kong. EMSD should promote the principles of "shared responsibility" and enable "user surveillance".

9. Lift owners have a personal interest as lift users. They have a prime responsibility and they share it with the RCs and REs they engage to service their lifts. The safety certificate is a key instrument in enabling "user surveillance". Properly documented, the certificate is both a safety assurance and a key source of information on the current state of lift maintenance. With a transparent record of EMSD's disciplinary system against RCs, lift owners can make an informed choice and the trade will view it as an incentive for upholding standards. Consumer choice means business and competition is a powerful tool for quality assurance.

## ***Standards, Statistics, Monitoring and Analysis of Trends***

10. Maintenance standards and time-lines for lift examination and submission of safety certificates are essential for EMSD to monitor the performance of RCs and REs and take enforcement action in cases of default. EMSD's standards and time-lines were unclear, and vital information and statistics were not available. During the investigation, we have observed a positive change in attitude and approach. We hope EMSD will invest time and efforts in setting clear standards and building up an operational information base.

## ***Handling Overdue Cases***

11. We observe that EMSD's timeframe of issuing reminders (seven weeks after a lift is overdue for examination) is long and inconsistent with the statutory timeframe to issue a Form 9 order (five weeks) and prohibition order (eight weeks). Although EMSD has tightened up the monitoring of lift examination and outstanding lift certificates, it should monitor and assess the effectiveness of these measures regularly.

### ***Tracing Responsibility for Late Certificates***

12. We note that EMSD cannot ascertain the party or parties responsible for delay in submitting lift certificates and a time-limit is not imposed on RCs to countersign the certificate before sending it to lift owners. Before any legislative amendment to plug the loophole, EMSD should require RC to record the date of issuing lift certificates to lift owners and impose administrative sanctions to repeated offenders for late submission of certificates.

### ***Transparency of Disciplinary Records***

13. Disclosure of EMSD's disciplinary records under the performance rating system is useful reference for lift owners in their selection of RCs. The potential damage to reputation and loss of business will urge RCs and REs to stay off EMSD's blacklist. As an additional incentive for adhering to good practices and high standards, we suggest that EMSD inform the insurance industry of the availability of the system on its website.

### ***Display of Certificates***

14. We observe that in many cases lift certificates are not displayed in a prominent position for easy reference and the print is small. EMSD should revise the format of the certificate to make it more legible, particularly with the expiry date boldly and clearly visible in standardised format.

### ***Flaws in Disciplinary Action***

15. EMSD normally should initiate disciplinary action if a RC or RE receives three warning letters within 12 months. In the only case EMSD considered for disciplinary actions on a RC, the following problems were identified:

- (a) the Engineer who reviewed the case had failed to report the result to his supervisor and the case was not followed up subsequently;
- (b) EMSD failed to issue four warning letters despite meeting the criteria due to computer error;
- (c) EMSD issued five warning letters erroneously due to computer error.

16. EMSD should review and strengthen its procedures and pinpoint responsibilities in the administration of disciplinary measures. In addition, EMSD should review the procedures and criteria for issuing warning letters under PMPS, set out the rules and clarify their rationale, update the PMPS document and promulgate it to the trade.

### **Recommendations**

17. The Ombudsman had made 13 recommendations to the Director of the Electrical and Mechanical Services, including the following:

- (i) promote the principles of "shared responsibility" and "user surveillance" of lift safety through extensive publicity and public education;

- (ii) revise the format of the lift certificate and enforce rigorously the requirement for its conspicuous display;
- (iii) alert the insurance industry to the availability of the performance rating system;
- (iv) invest time and efforts in setting standards and building up an information base;
- (v) review in six months' time the mechanism for following up overdue lift examinations and lift certificates;
- (vi) secure information on the date RCs issue lift certificates to lift owners and impose sanctions for non-compliance;
- (vii) consider a proper code of practice and a hierarchy of accountability for determining whether or not to proceed with disciplinary action against a RC or RE, including the monitoring of the progress of disciplinary proceedings; and
- (viii) review the procedures and criteria for issuing warning letters under PMPS, set out the rules and clarify their rationale, update the PMPS document and promulgate it to the trade.

18. EMSD has accepted our recommendations and provided us with a tentative timetable for implementation.

**Office of The Ombudsman  
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