



INTERNATIONAL CONFEDERATION OF INSPECTION AND CERTIFICATION ORGANISATIONS

CEOC Position Paper - Independence, Impartiality, and Integrity

of candidate institutions and inspection bodies

1. Introduction

In the use stage, a national ministry (NM) makes use of its appointed inspection bodies (IB's) in the system of inspection (hereinafter, inspection) of lifts for persons (hereinafter, lift). These IB's are subject to private law and must meet the criteria and procedures set down by the NM. These criteria and procedures can vary by Member State. Nonetheless, independence, impartiality and integrity are essential to all Member States for the proper functioning of an inspection body.

This paper provides elaboration and substantiation for the criteria of “independence, impartiality and integrity” (hereinafter, the “3-I's”) within the European statutory framework. These are subject to possible National supplementary and complementary details.

2. Framework

The statutory framework for IB's is set down in the following documents, amongst others:

- a) Directive no. 95/16/EC of the European Parliament and the Council of the European Union of 29 June 1995 on the approximation of the laws of the Member States relating to lifts (Official Journal L 213) ('EU 95/16')
- b) ISO and EN standards with their guidances
- c) Documents of the EA (European co-operation for Accreditation)
- d) Local implementing decrees, as amended

There are, therefore, both international and national regulations that must be viewed as a whole. National regulation usually is based on international regulation. The basis for all relevant regulation for lifts is 95/16/EC.

An IB must meet the conditions set out in Annex VII of 95/16/EC. This Annex sets many more specific requirements for the IB. In particular, the integrity, independence, and expertise of the IB and of those charged with carrying out the inspections, are elaborated. Point 2 of this Annex states the following about integrity and independence:

“The body and its staff must carry out the inspection or supervision operations with the highest degree of professional integrity and technical competence and must be free from all pressures and inducements, particularly financial, which might influence their judgment or the

results of the inspection, especially from persons or groups of persons with an interest in the result of inspection or supervision.”

It can be concluded that the legislator, both European and at the national level, intended that the IB’s independence must be beyond all doubt.

Both in terms of its guidance and the inspections to be performed, standard NEN-EN-ISO/IEC 17020:2004 is an important document for Inspection bodies. NEN-EN-ISO/IEC 17020:400: “General criteria for the operation of various types of bodies performing inspection”, and document IAF/ILAC-A4:2004, “Guidance on the application of ISO/IEC 17020”, for part of the law and regulation. Both concern a Type A body under these standards.

The notes provide in respect to the independence of a Type A body that such an IB must be able to demonstrate that it is not ‘linked’ to any lift company in each case through ‘common ownership’, ‘common ownership appointees, directly reporting to the same higher level of management’, or ‘contractual arrangements’.¹ The text reads as follows with respect to the latter:

“contractual arrangements, informal understandings or other means that may have an ability to influence the outcome of an inspection.”

This citation covers any form of arrangement or understanding that could have any influence over the outcome on an inspection.

The general tenor of the various provisions, some worded generally while others are more specific and elaborated, is that an IB must avoid coming into a position in which it can no longer guarantee its independence. The heart of this is that any appearance of conflict of interest must be avoided. In any case, it is clear to whom the independence criterion applies. These are any legal or natural person who could have an interest in the outcome of inspections: lift companies and owners of lifts. See in this regard the text of 95/16/EC, Annex VII.

The documentation provides a number of guidances that can mark out the boundaries. See in this regard the cited Article 4.2.1a of IAF/ILAC-A4:2004, “Guidance on the Application of ISO/IEC 17020”. This explains that the term ‘contractual arrangements’ in ISO 17020 broadly encompasses ‘contractual arrangements, informal understandings or other means that may have an ability to influence the outcome of an inspection’. This focuses quite specifically on agreements, contractual or otherwise. This means that care should be taken in making agreements or arrangements. Whatever these may involve, any appearance of conflict of interest, and thus lack of independence, must be avoided.

3. Safety

The inspection must be independent of any party whatsoever in respect to the inspection outcomes and must be carried out in accordance of an established certification schedule.

¹ IAF/ILAC-A4:2004 Guidance on the Application of ISO/IEC 17020 art. 4.2.1a.

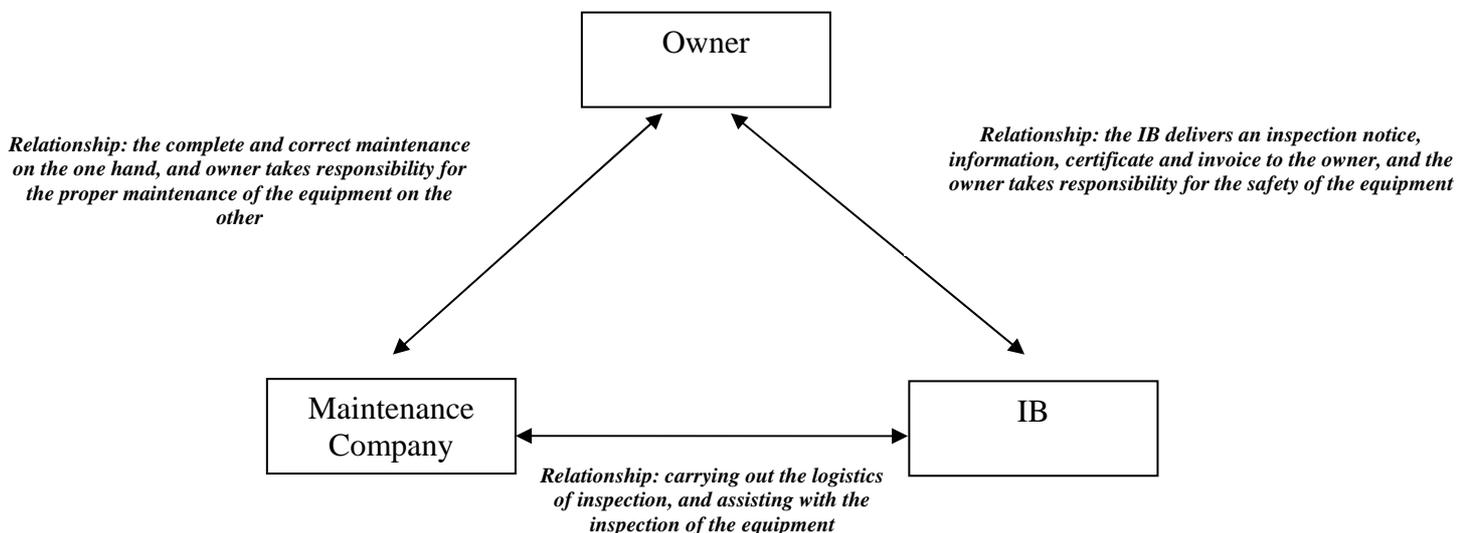
In this process the lift owner is informed about the condition of the lift as at the time of inspection. Both during the maintenance period, and based on the inspection data, the lift owner must have its lift put into such condition that it satisfies the minimum safety requirements if it wishes to keep the lift in use.

4. Functioning of the Statutory Framework in relation to the “3-I’s”.

The current Statutory Framework in its application stage is based on a balance among three directly involved parties: the Owner, Maintenance Company, and the IB. It is important to understand the different interests of the parties so they can be clearly distinguished in the application stage:

- **Owner:** bears at all time the final responsibility and liability for the safety of the equipment and its use, has an interest in its complete and proper maintenance, and entirely independently of that in its safety inspection;
- **Maintenance Company:** after receiving a commission from its owner, it is responsible for the complete and correct maintenance of the equipment concerned, and has an interest in carrying out its work as efficiently and effectively as possible;
- **IB:** after the owner (the designated certificate holder) issues the maintenance, the IB is responsible for carrying out a qualitatively high quality inspection of the equipment in question, and has an interest in the highest degree of safety, and in carrying out its activities as efficiently and effectively as possible. Safety in this regard includes both safety in the use of the lifts and safe work by the Maintenance Company and the IB.

The field of action in the application stage can be depicted as follows:



As described at 2. Box: this is a matter of law and regulation.

The paragraph on “contractual arrangements, informal understandings or other means” makes a distinction between the types of arrangements that may and may not be made.

The system described has, in the framework of the “3-I’s”, a balanced triangular relationship among the Owner, the maintenance company, and the IB. It is only in this situation that one has the required complete independence of a Type A body. Moreover, it is only when these conditions are met is it possible for the owner, the primary interested party, to select any desired competent IB freely and independently. Every other situation produces the appearance of a conditional sale.

The discussion above reveals that the parties involved have different interests and obligations. Because this process requires strictly separate, complementary roles, it is undesirable for the role of the IB to be undermined by the Maintenance Company taking over the client relation and thereby removing one of the lines and thus one of the control mechanisms associated with it. This would eliminate the direct line between the IB and the owner, which lead to the monitoring system and its balance amongst Owner, Maintenance Company, and IB being undermined.

The underlying point here is the appearance of conflict of interest which is generated by the use of the term “subcontracting”. When with a “subcontracting” the IB is subordinated in the role of subcontractor to the Maintenance Company.

In the balanced triangular relationship, the system functions using chain management, within which the agreements must be made for there to be an effective and efficient inspection process. In order to arrive at an independent inspection in this context there must be cooperation with the owner and the lift company.

There is an alternative way to achieve process optimisation in the balance amongst Owner, Maintenance Company, and certified inspection body without need for subcontracting. This also eliminates any appearance of conflict of interest and dependence. This is the system for lift safety. Commercial interests are subordinated to safety.

The chain management must survive the test for the “3-I’s”; once it does, agreements can and may be made with the industry and the owner.

The specific and unambiguous implementation of the “3-I’s” is well possible in the framework of this system to assure that the IB operates as a Type A entity in the context of the system and thereby fulfils its role properly in the triangular relationship described.

5. Due Care

With regard to the aforesaid “contractual arrangements, informal understandings or other means” there is therefore a clear distinction to be made as to the type of agreements that can be ascribed to the aforesaid chain management and that can survive the test of the “3-I’s” and then can and may be made, and agreements that have such an impact on the “3-I’s” of the IB that

these cannot and may not be entered. The risks arising from this latter group of agreements cannot be removed convincingly by a RI&E including a set of measures to prevent, or worse, only limit these risks.

There is a danger that each participant in the structure described will act out of self-interest and put its own benefit above that of the people who enter the lifts while the system intends the common interest in safe and high quality lifts to prevail.