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By fax at 2537 1851

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Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Sir

Buildings (Amendment) Bill 2010

In relation to the Buildings (Amendment) Bill 2010 concerning the proposed Mandatory Building Inspection Scheme (MBIS), we are in receipt of a copy of the Committee Stage Amendments from the Buildings Department, which is to be moved by the Hon KAM Nai-wai at the Legislative Council meeting to be held on 29 June 2011. Being one of the professional institutions which has been consulted by the Buildings Department on the implementation of MBIS, we would like to offer our views and observations as set out in the enclosure for the consideration of the Legislative Council.

Yours sincerely

Ir Dr CHAN Fuk-cheung
President

Enc

FCC/PP/SL

Enclosure**The Hong Kong Institution of Engineers****Views on the Committee Stage Amendments
to the Buildings (Amendment) Bill 2010**

In relation to the Committee Stage Amendments (CSAs) to the Buildings (Amendment) Bill 2010 to be moved by the Hon KAM Nai-wai at the Legislative Council meeting to be held on 29 June 2011, the Hong Kong Institution of Engineers would like to offer our views and observations as follows for the consideration of the Legislative Council:

- (1) Under the current Buildings Ordinance and the Building Management Ordinance, justified deviations from the Code of Practice (CoP) is NOT a criminal offence. The proposed CSAs do not align with the legal norm.
- (2) Codes of Practice or Practice Notes for Authorized Persons and Registered Structural Engineers (PNAPs) or Technical Memorandums (TMs) are broad consensus documents representing standards of good practice. They take the form of recommendations and to have one formulated necessarily take considerable duration. The qualified person who complies with the recommendations of any CoP currently in force has a right to expect endorsement. It should also be noted CoP is a living document subject to continuous improvement from time to time. It should not be made summarily mandatory in a form that any contravention of it is a criminal offence otherwise it could stifle improvement changes. In particular when more recent good practices are being developed or identified where adopting the same would be highly appropriate and beneficial for our community but could not be timely incorporated into the current issue. This is particularly true with issues concerning environmental impacts. The qualified persons are at the best position to render the professional judgment and likewise, the employer or the endorsement authority has a right to expect justification from the qualified person who chooses not to comply with a current CoP.
- (3) Under certain circumstances, the employer may find it essential to introduce departures from the CoP and would request the qualified persons to examine whether deviations from the CoP would be appropriate for their good reasons. A mandatory CoP not only inhibit qualified persons in offering viable or even better alternative but would prohibit citizens making reasonable and proprietary choices. It is certainly inappropriate to make it a criminal offence for qualified persons in finding justified deviations from the CoP and the employer aiding and abetting to the crime.
- (4) We also consider that the Registered Inspectors (RI)/ Qualified Persons (QP) should not be held liable for all offences that are committed by other members of his company who had jointly signed the declaration in submitting the tender.