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President Ir Dr Alex S K CHAN BSc(Eng) PhD  
 FHKIE R.P.E. CEng FIMechE FCIBSE FHKIOA SenMCMES

15 August 2003

Clerk to Bills Committee  
 Legislative Council  
 Legislative Council Building  
 8 Jackson Road  
 Central  
 Hong Kong  
 (Attn: Mr Joey Lo)

Dear Mr Lo

### **Bills Committee on Buildings (Amendment) Bill 2003**

Thank you for your letter of 1 August 2003 inviting the Institution to attend the LegCo Bills Committee on Buildings (Amendment) Bill 2003 and to comment on the Amendment Bill.

We are pleased to submit our views on the Buildings (Amendment) Bill in respect of those areas, which are of concern to our members. The HKIE is of the view that the Amendment Bill is generally acceptable and practical. Our members nevertheless have expressed concern on the sections related to the registration of geotechnical engineers (RGE), facilitating law enforcement, improving service to the public and minor works control regime. Our members' concerns and views are elaborated in the attachment for your consideration.

We request the Bills Committee to take account of our comments and suggestions in its consideration of this Bill. We particularly urge the Bills Committee to pay special attention to the section on registration of RGE to ensure that it is in line with our previous suggestion which has been agreed by the Director of Buildings in his letter of 17 January 2002.

Thank you for your kind attention.

Yours sincerely

Ir Dr Alex S K Chan  
 President

Encl.

Attachment

## The Hong Kong Institution of Engineers

### LegCo Bills Committee on Buildings (Amendment) Bill 2003 - The HKIE's Views on Buildings (Amendment) Bill

#### A. The Registration of Geotechnical Engineers (RGE)

Whilst we concur with the proposals made in the Amendment Bill on the whole, we strongly recommend the Committee to scrutinise the views as suggested previously in our letter to the Buildings Department on 21 December 2001 in relation to the grandfather provision for RGE. Attached please find a copy of our letter of 21 December 2001 and a copy of reply from the Buildings Department of 17 January 2002 for your reference and information (Appendix I and Appendix II).

##### i. Grandfather Provision for RGE

In the letter dated 21 December 2001 from the President of the HKIE to the Director of Buildings and in the reply by the Director of Buildings dated 17 January 2002, it was mutually agreed that:

*AP(Engineers) and RSEs who have certified the completion of the site formation works for a prescribed number and nature of projects will be eligible for RGE registration under the grandfather provision.*

*When the criteria for RGE registration under the grandfather provision are clearly spelt out, the procession of the application would merely be the verification and validation of the projects. Professional assessment and evaluation on the AP/RSE applicant's engineering knowledge would not be required.*

*The details of the prescribed number and nature of site formation projects spelt out in the HKIE President's letter are:*

- *Five (5) projects which require Category 1 geotechnical supervision within the last 7 years; or*
- *Two (2) projects which require Category 2 geotechnical supervision, within the last 7 years.*

*The Director of Buildings further adds a third alternative as:*

- *Three (3) projects which require Category 1 geotechnical supervision plus one (1) project which requires Category 2 geotechnical supervision, within the last 7 years.*

However, the criteria for grandfather provision formulated in the proposed new section 53I(2)(a)(i), (ii) and (iii) - [clause 43 of the Bill] are:

- (2)(a)(i) *during the period of 7 years immediately preceding the date of his application, has been engaged in or has taken part in site formation works carried out and completed in accordance with this Ordinance;*

(ii) *was the AP or RSE appointed under section 4(1) in respect of the building works or street works in relation to which the site formation works were carried out; and*

(iii) *satisfies the Building Authority that he has the appropriate geotechnical experience and competence in relation to the site formation works”.*

The detailed criteria agreed by the Director of Buildings are not clearly spelt out in the new subsection (i) above, and the principle of no professional assessment to grandfather applicants has been changed to the discretionary satisfaction of the Building Authority (BA). By virtue of subsection (iii), the BA would have the discretionary power to determine “how many projects”, “how big the projects are” and “how appropriate is the experience and competence” in grandfathering.

The grandfather provision is one of the key elements of the RGE registration system concerning the continuity of professional practice of many HKIE members. This is a provision for those who are already undertaking the statutory duties in geotechnical works to continue with the professional practice. This key element has been discussed in many forums before an agreement was reached. The Director of Buildings, on understanding the concern of practicing professionals and the need of the grandfather provision for registration, should address the issue clearly and unambiguously in drafting the legislation in order to eliminate any worry on interpretation and intention of his discretion.

We therefore suggest that proposed subsection (2)(a)(i) be revised to spell out fully and clearly the agreed grandfather criteria. We also suggest that proposed subsection (2)(a)(iii) be deleted, to eliminate any discretion to be exercised by the Building Authority in grandfathering.

## **ii. Appeal**

Section 3(10) of the existing Ordinance states:

*Where an application made under subsection (6) is refused or deferred under subsection (9) or (9A), the applicant may appeal under section 44 from the refusal or decision to defer.*

Clause 4(s) of the Bill proposes to repeal this subsection of the Ordinance. We wish to obtain clarification on the appeal system after repealing.

## **iii. Plans and documents required to be signed by RGE**

The Bill proposes to amend Building (Administration) Regulation 12 to stipulate plans and documents to be signed by RGE, by adding new regulation 12(5):

(5) *All geotechnical plans, geotechnical assessment, geotechnical details and calculations, geotechnical reports, site investigation reports or ground investigation reports required under or pursuant to regulation 8(1)(b)(iv), (ba), (bb), (bc), (d), and (l), (3) and (4)(c) shall be signed by a RGE, and his signature shall be deemed to be his assumption of all*

*responsibility .....*

When applying the new regulation to foundation works, it stipulates “all site or ground investigation reports required under or pursuant to regulation 8(1)(d) [*8(1)(d) refers to foundation plans*] shall be signed by a RGE”. Since site or ground investigation reports are always necessary to be included in foundation plan submissions, this new regulation implies that all foundation works would require the statutory appointment of a RGE.

When applying the new regulation to excavation works [*8(1)(bc) refers to excavation and lateral support plans*], it implies that even very shallow excavation works (such as the excavation for footing or pile cap construction) would also require the appointment of a RGE.

The proposal does not fully address the interface problems for RSEs and RGEs. The requirement of a RGE for geotechnical safety of slopes and site formation works is understandable, but the mandatory appointment of a RGE concurrently with the RSE for all foundation works and even for shallow excavations is a proposal to devalue the professional capability of structural engineers. It is also an unnecessary burden to the industry.

We therefore suggest eliminating the reference to 8(1)(d) (i.e. foundation works) in the proposed regulation 12(5). We also suggest introducing an overriding clause, similar to Building (Administration) Regulation 12(4), to specify certain depth of excavation works that shall not require the signature of a RGE. In this respect, we recommend that documents and plans for excavation depth not exceeding 4.5m shall not require the signature of a RGE.

## **B. Facilitating Law Enforcement**

### ***i. Clause 39 - Offences***

In general the HKIE agrees with the Buildings Department (BD) that the amount of fines stated in the ordinance becomes outdated due to inflation over the last 20 years. Some adjustments must be made. On the other hand, it is also about time to review the penalties attached to the offences to make them more rational.

Whilst we have no adverse comments on section a, b, c, d, e, f, g, h, i and j, we do have reservation about section k subsection (2AA). This concerns one of the duties of the AP, RSE, RGBC or RSC specified under s 4(3)(b), 9(5)(b) or 6(b).

s4(3)(b) states that one of the duties of the AP/RSE is to “notify the Building Authority of any contravention of the regulations which would result from the carrying out of any work shown in any plan approved by the Building Authority in respect of the building works or street works”.

s9(5)(b) or 9(6)(b) have similar wordings but the subjects are the Registered General Building Contractor or the Registered Specialist Contractor.

The wording is not easy to understand even though this has been one of the duties of the AP/RSE/RGBC/RSC for many years. Many AP/RSE/RGBC/RSC have the

wrong idea that it means one should notify the Buildings Department when the RGBC/RSC is not working in accordance with the approved plan. This is wrong. The law in fact states the following scenario. There is a set of approved plans. However in carrying out the work in accordance with the approved plans, the RGBC/RSC may contravene the Building Regulations. In this case, there is a duty of the AP/RSE/RGBC/RSC to notify the Building Authority. Failure to notify the Building Authority is an offence. In the past, the offence attracted a fine of HK\$250,000 and imprisonment up to 3 years. The new amended Ordinance now asks for a fine of HK\$1,500,000 and an imprisonment of 3 years.

The HKIE believes that it is time to revisit this important duty of the AP/RSE/RGBC/RSC. A fine of HK\$1,500,000 and an imprisonment of 3 years is a severe punishment. According to the Building Ordinance, this is the top end of the punishment. Contravening a building regulation usually does not attract the maximum punishment. However, the simple act of failure to notify the Building Authority is a serious offence under the said regulation and does attract the maximum punishment. This is something no one can understand.

The HKIE would like the Buildings Department to rewrite the wording of s4(3)(b), s9(5)(b) and s9(6)(b).

We opine that failure to notify the Building Authority is not a serious offence and therefore should not attract the maximum fine and imprisonment.

We also consider that s40(1C)(a) should also be amended. This section states that any person who, (a) without reasonable excuse, fails to comply with an order served on him under section 32(2) shall be liable on conviction to a fine of HK\$2,000 and to imprisonment for 6 months.

Section 32(2) concerns the naming of streets and numbering of buildings. In Hong Kong, very few building owners comply with this particular section. The result is that only occasionally the number and street name could be found on a building. For instance, not even the Pioneer Centre, the headquarters of the Buildings Department has such a street name and number. Yet the Buildings Department is the department charged with the enforcement of this section.

The HKIE proposes that the section be deleted. Alternatively, even if the section is retained, a fine of HK\$2000 is sufficient. The requirement of 6 month's imprisonment should be removed.

### C. Improving Service to the Public

Under Clause 74 for Fees, the Building (Administration) Regulation 42 for prescribed fees of item 10 is amended as follows :

<b>Description of Services</b>	<b>Current Prescribed Fee</b>	<b>Amended Prescribed Fee</b>
For inspection of plan or document	Free	\$80 per file in paper form \$85 per file in microfilm form \$36 per file in electronic form

For a certified copy of plan	\$350	\$97 from paper record \$70 from microfilm record \$56 from electronic record
For a copy of plan	Not provided	\$72 from paper record \$51 from microfilm record \$38 from electronic record
For a certified copy of document other than a plan	\$45	\$45 from paper, microfilm or electronic record
For a copy of document other than a plan	\$1.5	\$38 from paper, microfilm or electronic record

***i. On inspection of record file***

For an existing building or development, there might be various files and documents, which are not directly related to the information requested. It will be unreasonable to charge the applicant when BD is unable to precisely identify the file and documents and, as a result, the BD may retrieve all files for the applicant's viewing. We would like to suggest that the charge is to be based on per successful application and in the range of \$100 to \$200.

***ii. For a copy of document***

The current charge for photocopying of document/calculation is only \$1.5. The \$38 per sheet is too expensive. We recommend that the current charge be maintained.

**D. Minor Works Control Regime**

We are in support of the general directions as outlined in the minor works control regime of the Amendment Bill, which is in relation to the introduction of a new category of simple and small-scale works. However, we suggest that the Committee should make clarifications on the criteria for categorisation of building works as minor works and list out specification in detail the types of minor works in that regard.

Noting the control mechanism with simplified procedures and strict control on the Minor Works Contractors, we would like to reiterate that an explication of the qualification for registration and the registration procedure for Minor Works Contractors should be provided for deliberation by our profession, in particular the details on Class A and B of Registered Minor works Contractor (RMWC).

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From the President

Ir Dr Joseph M K Chow OBE JP BSc DEng FHKIE  
RPE CEng FICE FStructE FCIT MIMT AP(Eng) RSE

By Mail and Fax 2840 0451

21 December 2001

Mr C M Leung  
Director of Buildings  
Buildings Department  
12/F-18/F Pioneer Centre  
750 Nathan Road, Mongkok  
Kowloon

Dear CM,

### Proposed RGE Registration

Following the last meeting of the HKIE RGE Working Group with you and your colleagues at your office on 15 November 2001, I am pleased to enclose the recommendations of the Working Group including the proposed grandfather requirements for AP and RSE. Please do not hesitate to contact me should you have further enquiries on this issue.

With our best regards,

Yours sincerely

Ir Dr Joseph M K Chow  
President

cc: All Members of the RGE Working Group

Ir Kenneth Hsu, Chairman

Ir Patrick Yim

Ir Ng Hon Keung

Ir Y C Koo

Ir Fred Ng

Ir W T Wong

Ir Chan Chi Chin

Ir Reuben Chu

Ir Dr Lau Chi Keung

Ir Dr Victor Li

Ir Dr James Lau

Ir P K Kwok, Secretary & Director General

Date: 19 December 2001

Subject: Proposed RGE Legislation

From: Ir. Kenneth Hsu/HKIE RGE Working Group/Chairman

To: Ir. Dr. Joseph Chow/HKIE/President

cc: Ir. P.K. Kwok/HKIE

cc: Albert Chow/HKIE

cc: Members of the HKIE RGE Working Group

I am pleased to inform you that the HKIE RGE Working Group has reached an agreement on the key elements of the proposed RGE Ordinance. With your approval, the Working Group would like to make the following recommendations to the Buildings Department for consideration.

1. The professional qualification requirement for RGE will be RPE(Geotechnical).
2. Within a period of 12 months from the enactment of the RGE Ordinance, RPE(Civil) and RPE((Structural) engineers who can demonstrate a satisfactory level of professional experience and competence in geotechnical engineering (as determined by the GERC) may register as RGE for a period of three years. By the end of the three years grace period, however, these RPEs must possess RPE(Geotechnical) qualification in order to renew their RGE registration.
3. There will be a grandfather provision for AP Engineers and RSEs to register as RGE if they can satisfy the requirement as detailed below.
4. Grandfather Provision for AP. AP Engineers who have certified the completion of the site formation works of the following number of projects will be eligible for RGE registration under the grandfather provision:
  - Five (5) projects involving site formation works where such works require Category 1 supervision, within the last 7 years, or
  - Two (2) projects involving site formation works where such works require Category 2 supervision, within the last 7 years



5. Grandfather Provision for RSE. RSEs who have been responsible in the following number of projects from preparation and approval of the design to completion of the site formation works may be eligible for RGE registration under the grandfather provision.

- Five (5) projects involving site formation works where such works require Category 1 supervision, within the last 7 years, or
- Two (2) projects involving site formation works where such works require Category 2 supervision, within the last 7 years

The RSE must secure endorsement on the above from the respective AP who had certified the completion of the site formation works of the project AND provided that

- (i) Other than the engagement of the RSE applicant, no geotechnical engineering sub-consultant was employed for the project, and
- (ii) The same project has not been claimed for RGE registration under the grandfather provision by more than one applicant.

6. Additional Criteria for the AP/RSE Grandfather Provision

- a. AP/RSE who wish to secure RGE registration under the grandfather provision must submit their applications within 12 months from the enactment of the RGE Ordinance.
- b. "Site Formation Works" shall be as defined by the Buildings Department.
- c. The projects must be located in Hong Kong and the AP has certified the completion of the site formation works at the time of application for registration.
- d. AP/RSE admitted under the grandfather provision will not be required to acquire RPE(Geotechnical) qualification for subsequent renewal of RGE registration.

7. The Working Group felt that the implementation of the AP/RSE grandfather provision should best be performed by the Buildings Department. This is especially the case when the criteria for RGE registration under the grandfather provision are clearly spelt out as above (i.e. go or no go). Professional assessment and evaluation on the AP/RSE applicant's engineering knowledge would not be required. The verification and validation of the projects worked on by the applicants can be more effectively carried out by the Buildings Department.



17 January 2002

Our Ref : (5) in L/M 1 to BD GP/BORD/75 IV

Ir Dr Joseph M K Chow  
The President  
The Hong Kong Institution of Engineers  
9<sup>th</sup> Floor, Island Beverley  
No. 1 Great George Street  
Causeway Bay  
Hong Kong

*Dear Joseph,*

Registration of Geotechnical Engineers (RGE)  
Under the Buildings Ordinance

Thank you for your letter dated 21 December 2001 forwarding the recommendations of the HKIE RGE Working Group.

I am pleased to inform you that after a detailed review of the matter, we agree to all of the recommendations of the Working Group, with the proviso that the Grandfather Provision for AP (Item 4), the phrase "who have certified the completion of" is intended to mean those AP Engineers who have been responsible for the site formation works continuously throughout the whole process from preparation and approval of the design to certification of completion. This requirement would be similar to that specified under the Grandfather Provision for RSE except that not being in a position to certify completion under the Buildings Ordinance, the RSE has reported to the certifying AP that he is satisfied that the site formation works have been completed in accordance with the approved plans.

To cater for all justifiable cases for grand fathering, we propose to include a third alternative in respect of the minimum number of projects for eligibility, to which I hope you would have no objection:

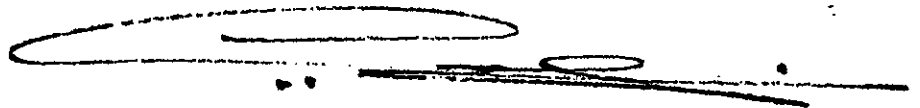
/s/Three ...

"Three (3) projects involving site formation works where such works require Category 1 supervision plus one (1) project involving site formation works where such works require Category 2 supervision, within the last 7 years".

As we have discussed this matter for a considerable length of time, I intend to proceed on the basis of the above unless we hear from your Institution otherwise. In any event, we are pleased to see the consultation on the RGE issue coming to a mutually agreeable conclusion.

Thank you once again for your support in this matter.

*Yours sincerely,*

A handwritten signature in dark ink, appearing to be 'C M Leung', written over a horizontal line.

( C M Leung )  
Director of Buildings