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HKIE(777/03)

23 December 2003

Ms the Hon Cyd HO San Lan  
 Chairman  
 Bills Committee on Buildings (Amendment) Bill 2003  
 Legislative Council Secretariat  
 Legislative Council Building  
 8 Jackson Road  
 Central, Hong Kong

Dear Hon Cyd Ho,

**Buildings (Amendment) Bill 2003**

Following our submission to the Bill Committee on 15 August 2003 with our views and recommendations to the Buildings (Amendment) Bill 2003, we have subsequently met with the Buildings Department to discuss our concerns on issues of the "Grandfather" provision of RGE, the division of responsibilities between RSE and RGE, level of fines and charges for making photocopies of documents. In this letter, we would like to recap the outcome of the discussion meetings with BD and to further put forth our views on areas of concern for your consideration.

Over the consultation meetings with the BD, we have reached a mutual understanding on the arrangement for issues of our concern on "Grandfathering" Provision for, and Statutory Responsibility of, Registered Geotechnical Engineer (RGE) that details of the provision will be specified in a practice note to AP & RSE (PNAP). We have also reviewed the practice note on RGE and are satisfied with the provisions. However, no conclusion on the level of fines and the charges for making photocopies of documents have been made after our consultations. We hope and believe shortly that BD will come up with constructive suggestions on the remaining issues.

We would like to restate our concern on the issue of the requirement of notifying Building Authority of any contravention of the regulations in plans approved and the penalty of imprisonment for 3 years and the proposed amended fine of HK\$1.5 million for failure to do so. We oppose such an arrangement because of disproportionate level of punishment on failure to report an error on a plan approved by BD.

We insist that the level of fines should be increased according to the composite consumer price index, which is the true value of the HK dollar, roughly three times since the fines were first determined in late 70s. Enclosed we would like to submit our proposed amendment on the provision of fines for your ease of information (Appendix I).

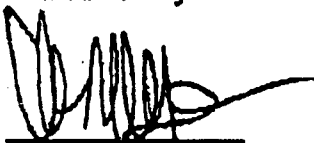
\*乃香港工程師學會法定會員的專稱，讀音為 "engineer"  
 \* pronounced as "engineer" is the abbreviation for the prefix of Corporate Members of the HKIE

## THE HONG KONG INSTITUTION OF ENGINEERS 香港工程師學會

We believe that the proposed charges of \$38 per copy for making photocopies of documents are not practical at all. Although the BD states that there is room for deduction for bulk copying cases, no amendment to the Bill has been suggested at this stage. Photocopying a typical volume of calculation report could easily be over 300 A4-pages would mean over HK\$11,000. This expense is a disbursement in a consultancy agreement and will be passed onto the public e.g. owners who wish to alter their flats, retailers who decorate their shops etc. We urge that the Bills Committee could look into the issue and note our concern on these unreasonable expenses for the public on bulk copying cases e.g. greater than 10 pages.

We understand that BD is making an effort to work out other issues with Financial Services Bureau and if our remaining concerns are lessen to a reasonable state, the HKIE is prepared to support the Bill.

Yours sincerely



Ir Dr Greg Wong  
Vice President

Encl.

cc Ir Dr the Hon Raymond Ho - w/e  
Hon Abraham Shek Lai Him - w/e  
The Hon Margaret Ng - w/e  
The Hon Audrey Eu, SC - w/e  
The Hon Lau Ping Cheung - w/e  
HKIA - w/e  
HKIS - w/e  
HKCA - w/e  
Buildings Department - w/e

Proposal of the Recommendation by the HKIE on the Provision of Offences

| Section                            | Offence  | Liability Conviction  |  |  |
|------------------------------------|--|---|--|--|
|                                    |  | Existing Provision  | Proposed Amendment   | Proposed Amendment by the HKIE   |
|                                    | Not appointing AP, RSE or RGE for design, supervision or certification of category I minor works.  |   | (a) Fine of \$800,000 and imprisonment for 2 years.<br>(b) Fine of \$30,000 for each day of continued offence. | (a) Fine of \$200,000 and imprisonment for 2 years.<br>(b) Fine of \$15,000 for each day of continued offence. |
| Proposed 40(1AA)                   | Not appointing minor works contractor to carrying out minor works.   | NEW ITEM  | (a) Fine of \$800,000 and imprisonment for 2 years.<br>(b) Fine of \$30,000 for each day of continued offence. | (a) Fine of \$200,000 and imprisonment for 2 years.<br>(b) Fine of \$15,000 for each day of continued offence. |
| Existing 40(1)<br>Proposed 40(1AA) | Carrying out building works without approval and consent from the BA.  | (a) Fine of \$100,000 and imprisonment for 2 years<br>(b) Fine of \$5,000 for each day of continued offence | (a) Fine of \$800,000 and imprisonment for 2 years<br>(b) Fine of \$30,000 for each day of continued offence   | (a) Fine of \$300,000 and imprisonment for 2 years.<br>(b) Fine of \$15,000 for each day of continued offence. |
| 40(1)                              | Occupying a building without occupation permit from the BA.  | (a) Fine of \$100,000 and imprisonment for 2 years<br>(b) Fine of \$5,000 for each day of continued offence | NO CHANGE  |  |
| 40 (1A)                            | Registered contractor not providing access for the BA to inspect building works.<br>While a closure order is enforced, entering any premises without permission from the BA. | Fine of \$5,000 and imprisonment of 6 months  | NO CHANGE  |  |

| Section                            | Offence   | Liable Conviction   |   |   |
|------------------------------------|---|---|---|---|
|                                    |   | Existing Provision  | Proposed Amendment  | Proposed Amendment by the HKJE  |
| 40 (1B)                            | Constructing access to or from any street without consent from the BA.  |   |   |   |
|                                    | Erecting structure over street without permission from the BA.  | (a) Fine of \$50,000 and imprisonment for 1 year.<br>(b) Fine of \$5,000 for each day of continued offence. | NO CHANGE   |   |
|                                    | Failing to comply an order served by the BA in respect of ceasing work, carrying out tests, dangerous buildings or hillsides, defective buildings and matters other than demolition of unauthorized building works. |   |   |   |
| Existing 40(1B) / Proposed 40(1BA) | Failing to comply with an order served by the BA to demolish unauthorized building works.   | (a) Fine of \$50,000 and imprisonment for 1 year.<br>(b) Fine of \$5,000 for each day of continued offence. | (a) Fine of \$300,000 and imprisonment for 1 year.<br>(b) Fine of \$30,000 for each day of continued offence. | (a) Fine of \$150,000 and imprisonment for 1 year.<br>(b) Fine of \$15,000 for each day of continued offence. |
| 40(1C)                             | Failing to comply with an order served by the BA to mark building number on building front.   |   |   |   |
|                                    | Obliterating a notice posted by the BA on a building.<br>Obscuring a street name or building number.  | Fine of \$2,000 and imprisonment for 6 months.  | NO CHANGE   |   |
| 40 (1D)                            | Building owner failing to give copy of notice of expiry of a closure order to those former occupiers with known addresses   | Fine of \$10,000 and imprisonment for 6 months.   | NO CHANGE   |   |
| 40 (1E)                            | While a demolition order is enforced, carrying out building works other than that required by the order.  | (a) Fine of \$50,000 and imprisonment for 1 year.<br>(b) Fine of \$5,000 for each day of continued offence. | NO CHANGE   |   |

| Section              | Offence   | Liable Conviction   |  |  |
|----------------------|---|---|--|--|
|                      |   | Existing Provision  | Proposed Amendment                               | Proposed Amendment by the HKCE                 |
| 40 (2)               | Failing to notify the BA of material change-in-use of a building<br><br>Contravening conditions imposed by the BA on modification or exemption granted  | Fine of level 6 (\$100,000) and imprisonment for 2 years            | NO CHANGE  |  |
| <del>40 (2AAA)</del> | <del>Obstructing BA's officer to exercise duty</del>  | <del>Fine of level 3 (\$10,000) and imprisonment for 6 months</del> | <del>NO CHANGE</del>                             |  |
| 40 (2A)              | (a) Permitting or authorizing the carrying out of works and complying with the Ordinance.<br>(b) Diverging in material way from approved plan.<br>(c) Knowingly misrepresenting plan, certificate, form or notice submitted to the BA | Fine of \$250,000 and imprisonment for 3 years                      | Fine of \$1,500,000 and imprisonment for 3 years | Fine of \$750,000 and imprisonment for 3 years |
| 40 (2AA)             | AP or RSE or Registered Contractor (or RGE) failing to notify the BA of any contravention which would result from the carrying out of works shown in approved plan  | Fine of \$250,000 and imprisonment for 3 years                      | Fine of \$1,500,000 and imprisonment for 3 years | Fine of \$10,000                               |
| 40 (2AA)             | AP or RSE or Registered Contractor (or RGE) failing to notify the BA of any contravention which would result from the carrying out of works shown in plans for minor works  | NEW ITEM  | Fine of \$1,500,000 and imprisonment for 3 years | Fine of \$10,000                               |
| 40 (2AB)             | Failing to comply with condition imposed by the BA on approval or consent for works other than site formation, piling, excavation and foundation  | Fine of \$50,000 and imprisonment for 1 year                        | Fine of \$200,000 and imprisonment for 2 years   | Fine of \$150,000 and imprisonment for 2 years |
| 40 (2AC)             | Failing to comply with condition imposed by the BA on approval or consent for site formation, piling, excavation or foundation  | Fine of \$250,000 and imprisonment for 3 years                      | Fine of \$1,500,000 and imprisonment for 3 years | Fine of \$750,000 and imprisonment for 3 years |
| 40 (2B)              | Carrying out, or authorizing or permitting to carry out, works in such manner that it causes, or likely to cause, injury to any person or damage to any property  | Fine of \$250,000 and imprisonment for 3 years                      | Fine of \$1,500,000 and imprisonment for 3 years | Fine of \$750,000 and imprisonment for 3 years |

| Section            | Offence  | Liability Conviction   |  |  |
|--------------------|--|--|--|--|
|                    |  | Existing Provision   | Proposed Amendment   | Proposed Amendment by the HKJE   |
| 40 (2C)            | Failing to comply with an order served by the BA on priority demolition  | (a) Fine of \$250,000 and imprisonment for 3 years<br>(b) Fine of \$50,000 for each day of continued offence | (a) Fine of \$1,500,000 and imprisonment for 3 years<br>(b) Fine of \$50,000 for each day of continued offence | (c) Fine of \$750,000 and imprisonment for 3 years<br>(d) Fine of \$50,000 for each day of continued offence |
| 40 (2D)            | Knowingly misrepresenting a material fact in a report submitted to the BA on defective drains in slopes  | Fine of \$250,000 and imprisonment for 3 years   | NO CHANGE  |  |
| 40 (3)             | Unlawfully and maliciously removing or damaging any shoring required by the Ordinance erected for a building or for ground water drainage works in the scheduled areas                                   | Fine of \$50,000 and imprisonment for 1 year   | NO CHANGE  |  |
| 40 (3A)            | Failing to comply with requirement imposed by the BA on ground water drainage works in the scheduled areas   | (a) Fine of \$50,000 and imprisonment for 1 year<br>(b) Fine of \$5,000 for each day of continued offence    | NO CHANGE  |  |
| 40 (4),<br>40 (4A) | Obstructing the entry of a person with a warrant to building or land to (1) erect shoring or (2) carry out maintenance of groundwater drainage works in slopes   | Fine of \$50,000 and imprisonment for 1 year   | NO CHANGE  |  |
| 40 (4B)            | Obstructing owners' corporation to comply with an order served by the BA on matters other than unauthorized building works or minor works  | NEW ITEM   | Fine of 50,000 and imprisonment for 1 year   |  |
| 40 (4B)            | Obstructing owners' corporation to comply with an order served by the BA to (1) demolish unauthorized building works or (2) rectify minor works that are in contravention of the Town Planning Ordinance | NEW ITEM   | Fine of \$300,000 and imprisonment for 1 year  |  |
| 40 (4C)            | AP, RSE, RGE or Registered Contractor knowingly certifying minor works that are in contravention of the Ordinance  | NEW ITEM   | Fine of \$1,500,000 and imprisonment for 3 years   | Fine of \$750,000 and imprisonment for 3 years   |