



# Surveying



Stephen Liu

## Message from the President

Tax avoidance and bankruptcies are on the rise, slow economy and layoff announcements are on the news every week. The Japanese economy contracted by 0.8% last quarter and Asia is now in recession. Given the uncertain outlook for the world economy, which is worsening further by the recent tragedy in New York, and the structural changes in the Hong Kong market, economists have revised downwards the 2001 GDP forecast to zero or negative growth. The good news is China will be admitted into WTO this November and China has fared better than most nations with an impressive growth of 8% this calendar year. We hope that Hong Kong could be benefitted by the growth of the Mainland economy due to the current lack of professional expertise there.

Similar to any other businesses, it might look a bit gloomy for the building and property market in Hong Kong. However, we should not be too depressed about the current situation but should prepare ourselves for the transformation that is taking place in China. The past scandals of construction quality have challenged the industry benchmarking of professionalism. It is time that the different disciplines within the surveying profession put their acts together to implement the best practices by ensuring the professional ethics and integrity are being followed and maintained at all times. As such, it helps to enhance our surveying profession's reputation and image to the public. One of the objectives of HKIS is to foster a strong and influential membership association among the different disciplines by further expanding and sharing our professional expertise with our counterparts in the Mainland.

## EXPANSION OF HKIS INFLUENCE IN HONG KONG, THE MAINLAND AND THE REGION

After several years of close contacts with the relevant counterparts in the Mainland, and with further recent visits to our friendly professional institutions in the Region, HKIS is working towards building up a regional association of professional surveyors for mutual recognition of the professional qualifications among the different professional institutes. This will ensure future co-operation and growth of the surveying profession in the Asia Pacific Rim. Nevertheless, it is not an easy task but requires a lot of effort and commitment from all parties. I hope all our members would favorably support this initiative of HKIS for a long-term regional integration objective.

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## EDITORIAL CONTRIBUTIONS

Surveying encourages article queries and submissions. Article submissions should include both hard (printed) copy and a diskette in Word format. Contributions should reach the Hon. Editor at the office of the Institute before the 10th of each month.

## Information & Contents

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## Advertising

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Friday 9:00am - 5:00pm  
Saturday 9:30am - 12:30pm

## PROMOTION OF PROFESSIONAL SERVICES IN THE MAINLAND

The Ten Professional Coalition and the Hong Kong SAR Government are working closely to help professionals in Hong Kong to promote their services in the Mainland. With the assistance of the Hong Kong SAR Government, there will be a visit to Beijing and an exhibition in Chongqing, by the end of November and early December respectively. Members would be informed of other details when the plan and the dates are confirmed.

## PARTICIPATION OF MEMBERS IN THE MATTERS OF THE INSTITUTE

It is observed that there is a general lack of participation from members in the matters of the Institute. Some suggest that many members join the Institute simply to fulfil the need of being a member of a professional body.

In 1998, the then Council put forward a motion to amend the Constitution and Bye-Laws so as to enable the Institute to run more smoothly and under a proper order. However, due to insufficient number of votes, the motion was not passed. This was one of the incidents showing the lack of participation of members in the Institute's matters.

I would like to reiterate that you as a member form part of the Institute. All members are obliged to contribute and support the functions and activities organized by the Council members who work for the Institute on a complimentary basis.

Therefore, to strengthen our Institute and maintain our professional reputation in the market, and to ensure that the Institute can serve you better and look after our surveyors' interest in the long run, I would urge you all to take a more active role and interest in the affairs of the Institute.

Any recommendations and comments to enhance the functioning of the Institute are welcome. Your views are very valuable for Council members to perform their duties and to serve the Institute better. **S**

## CONGRATULATIONS TO THE FOLLOWING WHO WERE ELECTED AS HKIS MEMBERS ON 13 SEPTEMBER 2001

### FELLOWS (2)

#### QS DIVISION

LATTER, ROBERT JAMES

SO WAI LIK

### ASSOCIATES (10)

#### BS DIVISION

CHAO LOK MAN

CHENG KWOK WAH

NG KIN SUM

YEUNG YUEN HIN

#### GP DIVISION

CHAN KWOK LEUNG

HONG KEUNG

LAU HO WAI, LUCAS

#### LS DIVISION

SHORT, CHRISTOPHER JAMES

#### QS DIVISION

NG HIN KAN

O'NEILL, PATRICK JOSEPH

### TRANSFER OF DIVISION FROM GP TO PD (1)

#### FELLOW

TSANG CHING LUN, EDWIN

### RESIGNATIONS (2)

CHUNG SIU YEE, AARON

HUI MAN KONG

# Building Surveying Division

We had two CPD events in August, which included a site visit to the INTEGER project and a briefing session on APC. A further CPD event for conservation of heritage was held successfully on 6 September 2001. Below are some photographs featuring our guest speakers at a souvenir presentation session.



*Prof. Barnabas Chung presenting a souvenir to Prof. David P.Y. Lung*



*Prof. Chung presenting a souvenir to Dr. Lawrence W.C. Lai*



*Prof. Chung presenting a souvenir to Dr. Daniel C.W. Ho*

A CPD on the topic of solar energy is to be held by the end of September 2001.

On the technical side, the Technical Advisory Panel has actively discussed the following items for the Government's consideration:

1. Designation of minor works into three types
2. Review of Building (Planning) Regulations
3. Draft PNAP for lighting and ventilation

The "Classification of Buildings in Hong Kong" scheme is being prepared by the Buildings Department. The BSD will actively participate in the implementation of this scheme.

On the educational side, two conferences will be organised overseas. FIG 2002 will be held in April next year in Washington, USA. Details of the event may be obtained at the website of FIG <http://www.FIG.net>. A conference addressing the issue of building pathology will be held at the University of Reading on 2-5 September 2002. It was agreed by the BSD Council to sponsor BS members to participate in the Conference. Please send your application for the consideration of the BSD council at the earliest opportunity.

BSD representatives will participate in a programme organised by Metro Radio to address the issues of property management and building maintenance.

The Housing Managers Registration Board had formally advised HKIS its registration requirement. Qualified GP surveyors and surveyors in other disciplines would need to pass 1 paper and 3 papers respectively if they intended to register under the Ordinance for housing management. The Division considered this unacceptable. Our President will follow up this the matter in conjunction with the Property Management Committee.

Last but not least, please be reminded of our annual BS Conference, which is to be held on 20 October 2001 (Saturday) at the J W Marriott Hotel, Admiralty, Hong Kong. Registration has already started. Please register early if you do not want to miss the event. **S**



## GENERAL PRACTICE DIVISION

Tony Tse, Chairman

### RECIPROCITY AGREEMENT ON RECOGNITION OF QUALIFICATION

An open forum to discuss the captioned was held on 7 September 2001. Despite the appalling rain there were about 50 members attending the forum. Following Mr. Tony Tse's brief introduction of the issue, Mr. Alex Lam, the Convenor of the Working Group, made a presentation to members of the background of the China Institute of Real Estate Appraisers (CIREA). Members were also advised that the proposal had been agreed, in principle, by the Council of the GP Division. In a discussion of more than 2 hours, a number of comments and proposals were made by those members present. Written comments received were also read out.

Whilst the majority view of the members at the forum was supportive of the proposed reciprocity agreement with the CIREA on the recognition of the merits of such arrangement for members' future business opportunities in the Mainland, which is a very fast growing economy, it was considered that the proposed requirements for the HKIS applicants were too restrictive, and hence would not bring any benefit to the majority of GP members. The general view therefore was to request the Working Group to review the proposed requirements with the CIREA. Some members queried the rationale for allowing members working in the real estate related government departments of certain rankings to be qualified for reciprocal recognition as they considered it would be more appropriate to relate to the members' years of experience rather than ranking. Some also questioned the prerogative granted to the GP Council members.

It was also pointed out by some members that the RICS together with the College of Estate Management (UK) had been working hard to promote the RICS training course in Shanghai and other major Chinese cities with a view to recruiting new RICS members in China. Furthermore, RICS may consider allowing the APC to be conducted in Chinese later.

Some members wished to clarify that membership of CIREA would be open to non-Chinese speaking members of the HKIS.

The Working Group will review all comments received and revise the proposal for agreement, in principle, with CIREA. Thereafter, the proposal will be put to GP members for resolution at the Divisional EGM to be held as soon as possible. Subject to GP members' approval, the matter will be submitted to the General Council of the HKIS for endorsement, hopefully in November 2001. Members will be informed of the progress in due course.

### CPD EVENTS

#### (1) Post-experience Program in Real Estate Development and Valuation

Following the success of the first course of the programme, a total of 65 members have completed the course. The 2nd course of the programme will be held from 31 October to 8 December 2001. Application forms for the course have been sent out to members. A total of 100 places will be available and the course will qualify for 40 CPD hours.

#### (2) Visit to the Shenzhen Institute of Real Estate Appraisers

Following our visit to Shenzhen on 27 July 2001, another visit to the Shenzhen Land and Real Estate Centre and Exhibition Hall of the Shenzhen Land and Planning Administration Bureau was held on 27 September 2001. About 40 members, including students, participated in the event. The Division will organize more visits to the Mainland in the future to provide more opportunities for our members to acquaint with the system and practice there.

### NEWS FROM THE CHAIRMAN OF PROFESSIONAL PRACTICE AND STANDARDS AFFAIRS PANEL, MR. K. K. CHIU

- (1) A working group comprising of Stephen Yip, Rock Tsang and K. K. Chiu has been set up to review the valuation standard and professional fees in respect of resumption cases. After a series of discussions and negotiations between the Working Group and the Lands Department, the Department has agreed in principle that professional fees will be payable in the resumption of agricultural land where the claimant has employed a professional surveyor to advise him on the reasonableness of the amount offered by the Government.

The professional fees will be calculated in accordance with Scale 10.1(a) of the Scale of Professional Charges for General Practice Services of the Hong Kong Institute of Surveyors (1 October 1995 edition) subject to the following conditions:-

- The claimant has employed a Registered Professional Surveyor (RPS);
- A comprehensive professional service and advice including preparation of a detailed valuation report has been provided to the claimant by the Registered Professional Surveyor.

If the RPS has not submitted a detailed valuation report and the claimant has accepted the Government's offer of ex-gratia compensation, the professional fee will be limited to a flat rate fee of HK\$8,750 (i.e. 50% of the minimum fee under Scale 10.1(a) of the Fees Scale). The professional fee payable in accordance with the Scale, including the flat rate fee, is intended to cover all incidental expenses incurred by the surveyor e.g. travel expenses, photocopying, land search fees etc.

The above is for reference only. For details, please refer to the Practice Notes to be issued by the Lands Department.

#### (2) Valuation Standards in the Global Economy

According to the recent survey of IVSC (International Valuation Standards Committee), more than 700 companies worldwide report their accounts on the basis of International Accounting Standards (IAS). The European Union is set to adopt IAS for all listed companies by 2005. It is fair to say therefore that the use of IAS is set to expand enormously over the next few years. IAS has a paper, IAS 40 Investment Property, which allows investment properties to be valued to Fair Value, i.e. current market value. However, it specifically excludes most leaseholds on the grounds that they are

classed operating leases as opposed to finance leases. If this standard is adopted, most of the companies holding properties for investment purposes will be adversely affected if they report their accounts on the basis of IAS.

IVSC is exploring a project to try and reverse this exclusion and needs to put together a body of evidence to support any argument.

If you have any comments on the IAS40 please provide us with your opinion so that we could pass the same to the IVSC for consideration and incorporation of the opinion into their comments to the IASB.

Please find below a message from Miss Marianne Tissier, IVSC Executive Director, for your reference. Should you have any queries, please send me an e-mail at [kkchiu@dtz.com.hk](mailto:kkchiu@dtz.com.hk) or fax to 2530 1502.

#### MESSAGE FROM IVSC

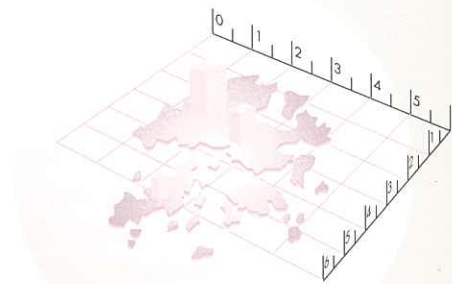
"A new era in standard setting is underway. Global markets are demanding financial information that is comparable across borders, transparent and reliable. Perhaps nowhere has this development been more evident than in the setting of accounting standards.

The accounting profession has pulled together behind a huge international effort to develop one set of global accounting standards. The old International Accounting Standards Committee has been transformed into a full-time independent standard-setting board. The Board is committed to developing, in the public interest, a single set of high quality, understandable and enforceable global accounting standards that require transparent and comparable information in general purpose financial statements. In so doing, the Board cooperates with national accounting standard setters to achieve convergence in accounting standards around the world.

This restructuring has sparked a spate of announcements of support for International Accounting Standards (IAS). The European Union has announced that all EU listed companies are to report under IAS in their group accounts. One repercussion is that the UK Accounting Standards Board (ASB) has announced that issuing UK standards is no longer their priority because of the objective of convergence with IAS. Rather, the ASB is determined to play its full part in the process of improving IASs and developing an international consensus.

Singapore is currently consulting on its disclosure and accounting standards. There seems to be a consensus, shared by the Minister of





Finance, that to preserve and strengthen Singapore's position as a major international financial centre, IAS should be adopted as the accounting standard for Singapore.

Hong Kong seems to be following suit. The Council of the Hong Kong Society of Accountants has decided that Hong Kong's approach to IAS should change from harmonisation (basing Hong Kong accounting standards on IAS with occasional differences) to adoption. This means that Hong Kong would not change IASB standards but could add guidance if appropriate.

Valuation and accounting standards are, of course, closely linked. There is a growing realisation that the valuation of property for financial reporting purposes must also be harmonised. David Cairns, a former secretary general of IASC, speaking at an IASB/IVSC sponsored seminar in London in June said: "A number of companies revalue their investment and other properties in their IAS financial statements. In the same way that the accounting policies and disclosures in these financial statements comply with International Accounting Standards, so all the property valuations should be carried out in accordance with International Valuation Standards."

David is also the author of 'International Accounting Standards Survey 2000, Applying International Accounting Standards'. This examined the policies and practices of 165 listed companies that referred to the use of IASs in their 1999 financial statements to see if these complied fully with IAS requirements. Hongkong Land was one such company. In its annual report, it publishes the report of the valuers, which states:

"We have valued those properties in Hong Kong in accordance with the Hong Kong Guidance Notes on the Valuation of Property Assets published by The Hong Kong Institute of Surveyors. The properties in Singapore and Vietnam have been valued in accordance with the RICS Appraisal Manual of The Royal Institution of Chartered Surveyors."

The conclusion expressed in the *Survey* indicated that the author considered the valuation should have been done under International Valuation Standards. Currently, the Big 5 accounting firms are involved in a major initiative to ensure the consistent application of International Accounting Standards. They will take note of the results of such a survey. Auditors of course have a duty to satisfy themselves that the work carried out by a company's external advisers has been properly prepared. If a company obtains external valuations, the auditor must review them because it is effectively signing them off in the published accounts. Since IVS are referred to in IAS 40, Investment Property

(which only came into effect this year) it would not be unreasonable for the auditor to require that the valuation be carried out in accordance with IVS rather than the national standards. And in the absence of detailed guidance on the application of 'fair value' in IAS 16, it is perhaps fair to assume that this same or similar guidance will be applied to fair value under IAS 16, which of course applies to owner occupied property. It is certainly interesting to note that over 50% of the sales of the 2000 edition of IVS were to the accounting profession.

There are signs that the accounting profession is getting tired of waiting for the valuation profession to adopt common valuation standards. The IASB has announced a project that would seek to converge the various approaches in different jurisdictions to accounting for revaluations of assets. It would be a limited-scope project to ensure that whenever and wherever revaluations are permitted they are measured and reported consistently and in a comparable fashion. The project is being undertaken by the accounting standard setters in Australia, New Zealand and the UK. The IVSC is in contact with all three and we are hopeful that the final recommendation will be the endorsement of the use of IVS for the valuation of real estate. But it is a warning that the accountants are prepared to step in if the valuation profession fails to respond.

IVSC has made enormous progress over the last two years in developing standards. The 2001 edition was launched in July at the first World Congress of the International Real Estate Society. But the relationship between the IVSC and national standard setters is still too 'arms-length'. National and international agendas are developed independently. How many national institutes have seriously undertaken a review of the IVS and compared them with national standards?

The IVSC has just released the first draft of a new business plan for discussion by all member institutes. The realities of the global capital markets make it imperative to work through international organisations rather than to continue to develop country-specific practices. The plan recognises that some may see this as a loss of power but it proposes a process that should ensure that national institutes do not feel threatened but rather fully included in the international standard setting process. The IVSC would like to operate as a partnership with national bodies. We could never deal with all of the issues alone, but we can pool resources, monitor each other's work and develop new standards together as we seek to remove the major differences between existing standards." ■

## LAND SURVEYING DIVISION

### LSD INTERNATIONAL AND MAINLAND COMMITTEES

LSD Council in its recent meeting has endorsed the formation of the **LSD International Committee** to be chaired by Mr. Siu Wai-ching, to act as a bridge between the LSD Council and HKIS International Committee. The membership will come from representatives of the current FIG and ISPRS commissions. It has also endorsed the formation of the **LSD Mainland Committee** to be chaired by Mr. Wong Chung-hang, to act as a bridge between the LSD Council and HKIS Mainland Committee. The membership is being formed. The terms of reference of the two committees are being prepared.

There appears to be a change of heart by the Land Registry in its stance towards land boundary in the Land Titles scheme. A window of opportunity seems to exist for NT systematic surveys as it considers whether some form of guarantee of land boundaries can be given along with a guarantee of title. Mr. Conrad Tang and Mr. Steve Lam, in their article **Land Titles Bill, Land Boundaries Problem and Systematic Survey**, provided some perspective and insight in the land boundary matters as they are now, and the manners they may proceed in the future, which are the subjects of their research proposal to The University Grants Committee of Hong Kong.

### LAND TITLES BILL, LAND BOUNDARIES PROBLEM AND SYSTEMATIC SURVEY

Conrad Tang, Assistant Professor, and Steve Lam, Lecturer, Department of Land Surveying and Geo-Informatics, The Hong Kong Polytechnic University

In the Land Titles Bill column of the August 2001 Land Registry News, it was considered "whether some form of guarantee of land boundaries can be given along with the guarantee of title" [LR, 2001]. The Land Registry has expressed her unwillingness to be involved in land boundary matters since the first publication of the Bill in 1994. With such change, it is prime time for land surveyors to work on the long existing land boundary problems.

Land boundary problems in the forms of disputes between abutting landowners, refusal to development proposals by District Lands Offices, rejection for mortgages due to uncertain boundary extent, argument on the land resumption payment with respect to the area, and litigation in the courtrooms are some common phenomena happening everyday

in this society. It all boils down to the land boundary record problems that land surveyors are well familiar with.

In 1986, the Boundary Rectification Working Group (BRWG) proposed two solutions. "One approach to rectify any defective boundary definition is to handle each case as it arises. Another solution to unravel the lot definition problems is to empower the Authority to survey all the lots in the New Territories." The case by case approach needs the consent of the affected owners, but it is difficult, if not impossible, to gather all necessary consents. Therefore, BRWG tended to go for the territory-wide re-survey of all the lots in the New Territories, and it had expected to have "some form of legislature" to back up the survey operation. [BRWG, 1986].

The proposal was not materialized. It seemed that the Government was not ready to commit new survey laws in those previous years. The Survey and Mapping Office endeavoured for another decade to achieve a survey law, however, the resultant Chapter 473 is somewhat limited to sub-divisions only.

Tang [1996] has proposed "a systematic boundary survey at the village zones in the New Territories" to the then Chairman of the Cadastral Survey Consultative Committee. "SMO could tender such surveys out to the ALS. Where the owners have great interests in developing their land and the land boundary problems are tackled in a much more cost-effective way."

It should be further expounded on the requirement of systematic survey. Usually, systematic survey is a process of adjudication of land titles. Therefore, both the territory-wide re-survey and the selective small region re-survey (e.g. some Village Zones) need the support of the law, mostly the law of land registration.

The Land Registry expressed her unwillingness to take the boundary issue on board of the Land Titles Bill. An officer of the Land Registry "clarified that the Land Titles Bill would aim to provide certainty of title and was not proposed to deal with land boundary issue. It was because those DD lot boundaries surveyed in the 1900's were not precise enough and it would take a very long time to rectify all the land boundaries before the legislation could be introduced. Digging up



those land boundary problems might also lead to a lot of claims for indemnity" [CSCC, 1999].

The Land Registry would like the boundary problems to be first solved by the Survey and Mapping Office (SMO), and the SMO would like a section on survey requirements to be contained in the Land Titles Bill. Now, the Land Registry is considering implementing some form of boundary improvements. That hope would be further sustained if the boundary problems could be tackled as much as possible for the time being.

The most practical boundary solution, without the boost of a new survey law, is still the small area systematic surveys. On the premise that the systematic surveys are done by authorized land surveyors or district land surveyors in the SMO, based on the best available boundary evidence, and the landowners will acknowledge the surveys and the results, the surveyed boundaries could then be recorded and confirmed by the SMO as the prima facie evidence of the parcel boundaries. The resultant parcel area is based on precise survey and will most likely be different from the legal registration. With a reliable boundary record, the Land Registry could then consider the adoption of the survey dimensions and area as the legal extent of the property. This will be a practicable step leading to legal boundary.

Research on the procedures and requirements of systematic surveys under the Hong Kong leasehold boundary system is imperative to the standardization of boundary re-definition surveys and the success of the systematic surveys running under existing legal protection. The Department of Land Surveying and Geo-Informatics of The Hong Kong Polytechnic University has submitted such a research proposal to The University Grants Committee of Hong Kong for approval. It is hoped that the research would be a contribution to the land surveying community in Hong Kong.

### References

BRWG, (1986). Report on Boundary Rectification in Rural Areas of Hong Kong, Boundary Rectification Working Group, p.19, June 1986.

CSCC, (1999). Section 1.3, Record of the 15th Cadastral Survey Consultative Committee Meeting, SMO, Lands Department, 10 February 1999.

LR, (2001). Land Registry News, No.15, The Land Registry, Hong Kong, p.5, August 2001.

Tang, C, (1996). "Improving Hong Kong land boundary system by SMO", communication with the Chairman of the Cadastral Survey Consultative Committee, 14 December 1996. S

## MEETING WITH NEW MEMBERS

The first luncheon meeting with the new members was held on 15 September 2001. Our immediate past QSD Chairman, Mr. T. T. Cheung, talked about the future role of QS in China. The meeting was well attended and it is hoped that these new members would take part in more HKIS organised functions to pave their way to become active members in the Institute's Council in future. Attendance will be by invitation. However, those who are interested in joining please contact Ms. Sandy Tang at [bssandy@polyu.edu.hk](mailto:bssandy@polyu.edu.hk).

## MAINLAND MATTERS

The Director of the Department of Standards and Norm of the Ministry of Construction, Mr. Qi Ji, visited the HKIS on 21 June 2001. He was one of the main supporters of the 2001 Beijing International Conference on Project Cost Management in May and he expressed his appreciation of the efforts of HKIS in making the Conference a big success.



From left: Mr. Tommy Yim, Mr. Qi Ji, the President and Mr. T.T. Cheung

The President of the Beijing Construction Project Management Association (BCPMA) Mr. Cai Jinchi, led a team of 5 officers on a visit to the HKIS office on 8 September 2001, on their return to Beijing after a visit to the RICS in the UK. He presented a valuable Chinese calligraphy painting drawn by the descendant of the last Emperor of China. He has expressed his wish to have more linkage with the HKIS on the development of the Association and the project management system in China.



From left: Chairman of QSD and Mr. Cai Jinchi

On 4 August, the QSD had a meeting with visitors from Tianjin including a professor from the Tianjin Polytechnic and Government officials at the HKIS office to discuss the QS practice and the Government procurement system in Hong Kong.



Other than visitors from Tianjin, we had Mr. Francis Leung (back row, 2nd from the left), Mr. T.T. Cheung (back row, 1st from the right) and Mr. Tommy Yim (front row, 2nd from the right)

The QSD is planning a trip to Beijing in late October to visit both the CECA and BCPMA.

The QSD has nominated Mr. Yang Sizhong, the current President of the China Engineering Cost Association (CECA), as an Honorary Fellow member of the HKIS. Mr. Yang is the ex Chief Economist of the Ministry of Construction of China. Since the setting up of the CECA, Mr. Yang has led a major reform on the construction cost pricing structure in China, from a more directive structure to a more market driven structure. He has encouraged the Department of Standards and Norm of major provinces to exchange knowledge with other countries especially with the HKIS. The 2001 Beijing International Conference on Project Cost Management was greatly supported by him and was a great success, which has greatly enhanced the reputation of HKIS in China.

## GREEN CARD FOR ENTERING THE CONSTRUCTION SITE

QSD members are reminded that as an Associate or Fellow member of the HKIS, you are eligible to obtain the green card without the need to take a further test. Please contact the HKIS office for details of obtaining the green card. S

## News from the Divisions

# QUANTITY SURVEYING DIVISION

Nelson Cheng, Chairman

## FINAL ASSESSMENT OF PROFESSIONAL COMPETENCE

Nineteen candidates who failed in last year's professional interview were interviewed again on September 4 and 5. All the candidates passed. Congratulations to them. The APC Final Assessment 2001 took place on September 14 and 15 at the HITEC. It is expected that the professional interview could be made in January 2002.

## CPD

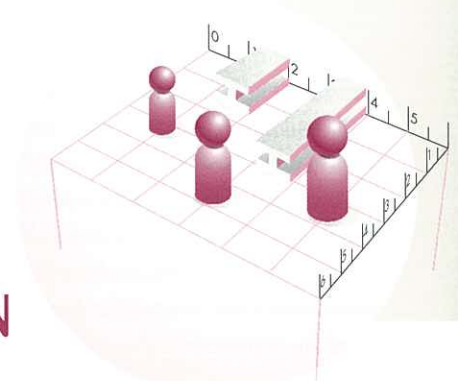
The site visit to the International Financial Center (Hong Kong Station Development) on 18 August was a success and was well attended. Thanks to Mr. Johnson So who guided our attendees through the project. It is expected that a further visit will be organised when the steel frame is completed.

## UPCOMING CPDS

15 October 2001 Tendering in China Construction Market - Practice of Assessing Contractors' Competitiveness in the China Construction Market, Dr. Shen Li-yin

November 2001 Talk by a speaker from Mainland China

Details of the events will be sent to all members in due course. All members are welcome to give their suggestions on future topics. Please contact Mr. Honby Chan at [hshchan@krcr.com](mailto:hshchan@krcr.com).





## JUNIOR ORGANIZATION

### JO CHAIRMAN MEETS WITH JOHN TSANG, THE NEW SECRETARY FOR PLANNING AND LANDS

David Wan, HKIS JO chairman, and Jim Yip, a JO committee member, attended a lunch meeting with John Tsang, the Secretary of Planning and Lands, on 26 September. The meeting was organized by La Salle Old Boys Surveying Professionals Network, which was recently set up and Jim Yip is the current network convenor. Mr. Tsang graduated from La Salle College in the late sixties before he went on with his study in MIT in the USA.

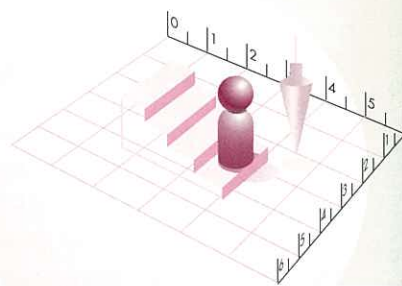
"The meeting with the Secretary, our fellow Lasallian, was friendly and we took the chance to exchange our views on current issues and our profession," says David.



Mr. Tsang, a professional fencer during his school days, is known for his fighting spirit. In his former post as chief of the Customs and Excise Department, he had successfully beaten the once rampant piracy, which gave Hong Kong a bad reputation.

Speaking on the newly-found Network, which has members from all divisions in surveying, Jim Yip notes: "Boom and bust cycle, an inherent landscape in the property industry, peppers our work lives as surveyors with soaring highs and disappointing lows. Home prices may fall, concrete slabs may crumble, and our jobs at times may look unsafe, but our network will stay - for the rest of our career!"

The web site address for the La Salle Old Boys Surveying Professionals Network is: <http://lscsurveying.blogspot.com/>



## THE PROPERTY RAINMAKER

### TONY LO'S METEORIC RISE TO FAME IN PROPERTY WHEELING AND DEALING: OPPORTUNITY, DETERMINATION AND A SURVEYOR BACKGROUND

Jim Yip AHKIS, MRICS, JO Editorial Board Member

In defiance of what most has believed, the property market has not reached its nadir. On the other hand, investment sentiments hit at the lowest ebb battered by a litany of bad economic news.

Unfazed, Tony Lo, head of the investment department at Jones Lang LaSalle (JLL), is busier than ever these days, as long-serving clients are scrambling for his property advice. Some of them are looking for a way out while some are looking to swoop for bargains.

"In a few months' time we are going to see a pick-up in market liquidities," says this top Hong Kong property trader, who has with his team handled property deals said to be worth \$60bn in the past ten years. "At the current market environment we see sellers being more pragmatic and buyers getting more aggressive and they are far more ready to roll out their cheque books. To property dealers, this is our harvest time." His investment team is working at full steam to piecing together deals that would have fallen apart in a rising market.

"Some quality properties are now ridiculously cheap, at fire sale prices and offering very good yields." Tony adds, "What's the point of hoarding cash into banks when the offers are virtually zero interest rate return?... I believe buyers are going to make a killing on their investments in two to three years' time." Tony Lo is known for his sharp tongue and is never bashful in putting forward his opinions.

### THE MIDAS TOUCH

The "60-bn" property man is, in fact, a "hot property" amongst the movers and shakers of the industry. I can testify his ubiquitous influence in the industry from the experience of my last two employments.

In Hutchison, my former boss, Mr. K.T. Tsui, used to call him up in the middle of our strategy meeting for his latest market insights. As their conversation was openly aired through the speakerphone, we could

all hear a stentorian voice booming across the room, persuasive and reasoned.

A few years later, I switched to working for a local investor and found my new boss's phone was also hooked to Tony's. The same old, deep voice once again haunted me. Whenever we were at the brink of signing away a big deal, Tony was called in. As a rule, we either had his blessing for the deal or we abandoned the whole project.

My boss believed Tony was a Saint in property. In June 1993, he bought a commercial building in Central for \$630mn, and in less than a year disposed it at \$900mn. Both deals were brokered by Tony. But the story behind the first deal was as thrilling as a roller coaster ride. The original vendor tried to use a strong-arm tactic to push through an additional clause, highly unfavorable to the new buyer, into the sales agreement at the 11th hour of the negotiation. My boss was about to walk away and the deal was close to sinking, only to be salvaged by Tony's skillful negotiation tactics at the last minute.

Tony himself has a lot of dramatic deal-making stories. The \$2bn sale of the Conrad Hotel in 1997 was one good example. Amid intense competitions, Tony edged out his rivals in an adrenaline-charged finish and clinched the deal.

With high hopes of poking into this top dealer's highflying career and the intricacy and delicacy of each mega deal, we had our first meeting at the Clipper Lounge, Mandarin Hotel. Dressed in a dark-gray suit, he is sturdy and has an ever-present smile on his face.

Though the scent of tea and coffee wafting through the café was alluring, I was rather interested in firing away my questions immediately to Tony. While waving his hands to his acquaintances - a CFO of a listed company and a former actor-now-turned developer, he calmly explained to me that he would not talk about the specifics of any particular deal. He cited his utmost responsibility of the privacy for his

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clients. He also bluntly replied that he had no idea of the total value of all the deals he has done so far and he has no interest in knowing the exact figure.

Apart from being taciturn in deal-making topics, Tony was very frank and open throughout the meeting.

Tony started out his property career as an agent in Jones Lang Wootton (the former company name of JLL) industrial department after graduating in surveying from the Hong Kong Polytechnic in 1985.

### WHEEL OF FORTUNE

Compared with the glamorous investment agency work, works in industrial agency were rather dull and nitty-gritty. Remembering the ceiling height, floor loading, and number of loading bays and lifts of different industrial buildings were the order of the day, before he became enamored of the plot ratio, airport height and residual values in the later stage of his career development.

Nevertheless, the industrial market turned out to be an excellent training ground for Tony. He forged strong relationships with many industrial building owners, up and coming new riches and developers like Sun Hung Kai, Wharf and Henderson, whose then industrial and warehouse portfolios were even bigger than the commercial and residential.

Tony honed his negotiation skills, which his colleague described as adroit and down-to-earth, by mingling with manufacturers, industrialists and laborers. "They like straight talkers and people of candid and forthright character," Tony says. "They also strictly observe one code in doing business: any deals must be worked out to the advantages of both parties."

In the late 80s came his first break in career when the Hong Kong economy underwent a structural change in which industrial bases were moved across the border and the existing facilities become redundant and ripe for redevelopment.

From 1988 to 1992, Tony closed rapid-fire deals of whole block industrial buildings, almost selling one block per month. The whopper of the deals was the sale of the Dairy Farm site in Kwun Tong in 1993 for \$1.03bn, which was a record price for an industrial building. His hard work in the industrial market eventually paid off handsomely and he had a smooth sailing.

On his account, success has flowed less from extraordinary talent than an uncanny sense of opportunity and unrelenting determination.

"There is no such thing as a carefully thought-out strategy. Things just

evolve, and then you figure out where you are going," Tony says. "I learned that if you just keep trying, you will eventually win. I have always done that. I usually win."

"He has a strong business acumen in property trading and has an unrivalled knack for pitching deals," says C. K. Lau, head of the valuation department at JLL and Tony's colleague. CK, also a successful deal maker, used to work in JLL's investment department under the leadership of the former head - flamboyant and a born salesman - Michael Chan throughout the early-to-mid 90s.

Tony also attributes his success to his surveyor background. "Clients rely on us for advice and we should act professionally, not in the form of a salivating salesman," he says. "We cannot just talk and get the deal. Instead, we deliver results as we bring in a win-win situation to all parties concerned."

"My story is pretty dry," as our interview comes to a close, he apologizes for not being able to bring along more sensational personal stories. "You can give up writing my story if you wish. I will not be unhappy." He said this three times, once before the interview over the phone, at the beginning and at the end of the interview. No, Tony. At least one thing I have picked up from the interview is never give up without a fight. ■



## GOVERNMENT MUST END UNCERTAINTY

### LATEST HOS DECISION TO SETTLE MARKET IN RIGHT DIRECTION BY OPERATING TO A WORKABLE FRAMEWORK

Nicholas Brooke, FRICS, FHKIS

There is nothing worse from an investor's perspective than uncertainty, and the problem is compounded when those to whom the investor looks for guidance are unwilling, or unable, to clearly define and explain the backcloth.

This is particularly so in relation to government policies and initiatives which determine investment decisions.

It is exacerbated when those policies or initiatives have been overtaken by events or history, yet officials concerned remain in denial or, at best, accept that change is necessary but prevaricate about what it should be.

This week's announcement (3 September 2001) by the Chief Secretary, Donald Tsang Yam-kuen, on subsidised flats was long overdue. It confirms the administration is content to see market forces set the future direction of the property market and allow forces to establish appropriate price and rental regimes.

This means down as well as up, and is particularly relevant in this economic climate where we have seen, and will continue to see, an erosion of capital values.

In terms of fundamentals, it involves a continuing decline until we reach an equilibrium where there is rationale and relationship between the levels of prices and rents being paid and the quality of the offering.

In terms of supply, we have moved away from the pre-1997 era when land supply was constrained for political reasons, to a situation where there is ample land on offer through the reserve-list process and where those that produce the product and are closest to the potential customer can ask for lots to be brought forward, provided they are willing to underwrite a realistic level of reserve. No longer do we hear comments about land shortages, rather that the Government is selling land too cheaply - but from whose perspective?

Demand clearly is a function of end-user and investment considerations and vulnerable to concerns about job security and the economy generally. Sentiment and confidence are put forward as the key issues in any discussion on the fragility of the housing sector.

The availability and the cost of credit are not seen as issues - never have mortgages been cheaper - while the range of choice is extensive with developers offering packages to lure buyers.

The market, however, remains fragile, essentially because there is the perception, and I think the reality, that prices have further to fall, yet in the background there has been the hope, and in some cases expectation, the administration will intervene or react, just to underpin values and prop up the market.

Unfortunately, this has been proven correct and while the Government may claim it is not averse to further correction and downward adjustments, the temporary suspension of Home Ownership Scheme (HOS) sales does not appear to bear this out.

Suspension smacks of short-term crisis management when what is required is a long-term solution and strategy covering the future of the HOS and a comprehensive review of the roles of private and public sectors in housing provision.

It is nearly two years since Chief Executive, Tung Chee-hwa, announced the move from bricks-and-mortar to financial assistance, and we still have no permanent overall framework in which to operate.

However, if, as I suspect, it is a case of the administration allowing the market to find its own bottom, then the story line could be positive. Further adjustment could make Hong Kong more competitive and help counter criticism that it is still too expensive in which to live and do business.



## NOTICE PROVISIONS - A CHANGE IN ATTITUDE?

John B Molloy, LLB(Hons), BSc(Hons), FHKIS, FRICS, FInstCES, MCI Arb, RPS(QS)  
Managing Director, James R Knowles (Hong Kong) Limited



In March 1998 I wrote an article in this journal entitled 'The Importance of Giving Notice'. The article considered the requirements in contracts to give notice as the first step in the procedure for securing an extension of time.

In particular the article considered whether a notice provision in a contract, which made the giving of notice a condition precedent to the granting of an extension of time, would leave the employer's rights to claim liquidated damages intact in the event that there was a delay caused by the employer but the contractor had failed to serve a notice and thus received no extension of time.

On the basis of the court's decision in the then recent Australian case of **Turner Corporation Ltd (Receiver and Manager Appointed) v Austotel Pty Ltd (1994)** where Justice Cole stated:

"If the Builder, having a right to claim an extension of time fails to do so, it cannot claim that the act of prevention which would have entitled it to an extension of the time for Practical Completion resulted in its inability to complete by that time. A party to a contract cannot rely upon preventing conduct of the other party where it failed to exercise a contractual right which would have negated the effect of that preventing conduct."

The article concluded that the court had confirmed that if a contractor is delayed by the employer and/or the Architect/Engineer, then they must comply with the notice provisions contained in the contract (regardless of whether the notice provisions are conditions precedent or not) if they are to be entitled to an extension of time. If they do not do so, they will be unable to claim that time is at large and must complete the work by the due date and pay liquidated damages if they do not.

Well the matter has been revisited recently by the courts, again in Australia in the interesting and potentially important case of **Gaymark Investments Pty Ltd v Walter Construction Group Ltd (20 December 1999)**, where the court came to a rather different conclusion.

Traditionally, whilst most standard forms of construction contract make it necessary to give notice when an event that may give rise to an extension of time is encountered, it is relatively unusual for such to be a condition precedent to the grant of an extension of time, i.e. no notice - no extension of time can be granted.

In Hong Kong, only the KCRC Conditions of Contract make the giving of notice a condition precedent to an extension of time, although a number of local PQS firms attempt to write special conditions for the Private Form that intend (with varying degrees of success) to achieve this result.

The reason why most forms have traditionally shied away from making their extension of time notices a condition precedent to the grant of an extension of time is because it used to be thought that it would be dangerous to do so, because in the event that the delay had been caused by the employer the contractor could claim that time was 'at large'.

Time becomes 'at large' where the employer causes a delay to the progress of the works and there is no provision in the contract to grant an extension of time for that delay. The effect of time being at large is that the employer loses the right to liquidated damages and the contractor's obligation is only to complete the works within a reasonable time.

It will underline the administration's priority in aiding the "have-nots" - first-time buyers with less emphasis on those who already have a roof over their heads. It would put to bed claims of restitution from those who boarded the gravy train in the mid-1990s and now find themselves with negative equity.

How can the administration rationalise its stance to allow market forces to play their part and for the market to find its new natural level? Firstly, it will contend the lead-up to 1997 was not the real world, that supply was artificially controlled and anybody playing the game should have realised there was a high risk of being left holding the parcel when the music stopped.

That was a world of trading without responsibility, and now we are in the real world - with all the factors that determine normal investment behaviour.

Secondly, since July 1, 1997, Hong Kong is no longer an "island" and as the boundary becomes more permeable in a northward direction from an infrastructure, business, land-use and housing perspective, we are bound to see a rationalisation of values. For the indefinite future, there will continue to be a significant difference in values to reflect the difference in the two systems. But, as access becomes easier, the quality of the mainland product improves and Shenzhen and the Pearl River Delta become serious alternatives, pricing will reflect all this.

The reality is that values north of the boundary will rise but similarly values in the New Territories are likely to continue to decline. Urban areas of Hong Kong will be less affected because people will pay a premium to live in, and to run businesses from, the urban area. But even the urban area cannot expect to emerge unscathed.

Notwithstanding the Chief Secretary's efforts, I believe the market will remain neutral and we may see values in the New Territories decline a further 15% to 20% in the next year to 18 months. There will be a corresponding 5% to 10% fall in urban areas.

A comprehensive plan with clearly enunciated strategies, goals and time lines should bring certainty, but it will not arrest such a natural decline.

I believe the administration will not just abolish the HOS to prop up the housing market. At a time when few could afford to buy a home, it was seen as a most important relief valve. There are still many people who cannot afford to buy through the private sector.

I believe we are looking at a scaling back of HOS production from 2003 onwards. It is difficult to halt the process mid-stream - to between 5,000 and 10,000 units a year - and tighten criteria for purchase so the

focus is on those with genuine need. The key will be to find middle ground. Any solution will need to be pragmatic and politically acceptable, recognising the changes in the market.

But it cannot neglect those who still cannot take advantage of the improvement in affordability and borrowing terms. Any scaling back of HOS production must be accompanied by a corresponding increase in the number and variety of loans and the types of financial assistance available to first-time buyers, because the administration's 70% or better target for home ownership is still a major driving force.

To the extent that sites have been allocated to the Housing Authority for HOS development, it is suggested they be handed back to the Government for sale with presumably an appropriate credit being registered in the Housing Authority Accounts reflecting the costs incurred and profit foregone. An alternative would be to allow the Housing Authority to dispose of those sites for mixed development and receive from the developer an element of cash and units/kind for allocation to those on waiting lists.

Transitions are never easy, but with a little creativity, it should be possible for the administration to bring better balance to the market without appearing to be trying to influence the key elements of supply and demand.

If the administration believes market forces should operate in Hong Kong and be allowed to find their own level, suspensions and temporary measures are not the way to go. They only extend the uncertainty without addressing the underlying challenges.

The administration has missed an opportunity to take decisive action and come clean with its long-term game plan and, in the process, has opened itself to the criticism that it is susceptible to factional pressures. ■



# Ambiguities and Discrepancies

James B Longbottom, Brian E Rawling & Associates



The assembly of contract documents on a fast track project can result in an amalgam of styles and provisions. A good example is the use of a particular specification (often a standard document from one of the design consultant's archives), which sets out the contractor's responsibilities and obligations with respect to programming, planning, safety and the like. Such provisions, when combined with the rest of the contract documents (e.g. the preliminaries bill and the contract drawings) often repeat or are in conflict with what has already been said, and therefore, ambiguities and/or discrepancies arise.

## COMMON LAW

To resolve such ambiguities and/or discrepancies it is necessary to determine the true meaning of the basic contractual obligations (the "contract intention"). In this regard, common law has developed many different legal rules for construing and interpreting documents. For example, there is the *contra proferentem* rule, where ambiguities and/or discrepancies in contract documents are interpreted against the persons who drafted or compiled such documents in the first place as it is these persons (referred to hereinafter as the "authors") who introduced the ambiguity and/or discrepancy; i.e. the fault lies with the authors who created the problem.

Another general rule is that documents drafted specifically for the project, including specifically prepared specifications for the project, prevail over standard wording found in standard forms of contract. The logic behind this doctrine is simple - words specifically written for a contract should, in the normal course of events, reflect the true intentions of the authors of the contract documents.

Building contracts often qualify the common law rules of construing and interpreting contract documents. The contractual entitlements and obligations, with respect to ambiguities and/or discrepancies, are often dealt with in three ways:-

### (1) Order of Priority

Most standard forms of contract include a clause, which stipulates the order of priority of the various contract documents. In other words,

the standard form expressly indicates which clause or document prevails should an ambiguity and/or discrepancy be found between provisions set out in different contract documents.

For example, clause 12(1) of the HKIA Standard Form of Building Contract (With Quantities) states that:

*"... but save as aforesaid nothing contained in the Contract Bills shall override, modify, or affect in any way whatsoever the application or interpretation of that which is contained in these Conditions."*

The words "affect in any way whatsoever" are thought to negate any provisions in the Contract Bills, which purport to override, modify or supplement the "Conditions". Whilst the clause may be deleted or amended (and in practice it usually is), the nature of the change will affect how discrepancies and/or ambiguities in the contract documents are dealt with.

Further, an order of priority clause may list the precedence of documents in descending order, often starting with the letter of award, then the special conditions and so on down the list of documents.

### (2) Co-ordination and Design Obligations

Co-ordination and design development are two of the most important aspects of present day construction contracts. Most contracts will impose upon the contractor express duties as to the need for co-ordination drawings, shop drawings, compliance with statutory obligations, design development, choosing materials and workmanship. In last month's article entitled "Co-ordination and Design Development" (HKIS Newsletter, September 2001), Brian E. Rawling highlighted the importance for contract documents to not only clearly spell out the contractor's role with respect to co-ordination and design development, but also the criteria or process for resolving ambiguities and/or discrepancies which arise or are identified during this process.

It was felt that if the employer caused a delay and the contractor failed (for whatever reason) to serve notice within the time specified in the contract, that if the giving of notice was a condition precedent to the right to an extension of time, then the contractor could claim that time was at large.

The **Turner Corporation** case appeared to have laid to rest this worry, and opened the way for all employers to safely amend their extension of time clauses by making the giving of notice a condition precedent to the grant of an extension of time, thus making life ever more onerous for a contractor.

However, the recent case of **Gaymark Investments Pty Ltd v Walter Construction Group Ltd (20 December 1999)**, has revisited this decision.

The facts of the case are simple. The employer, Gaymark Investments entered into a contract with the Contractor, Walter Construction for the construction of a hotel, retail and office complex in Darwin, Australia. Delays occurred to the progress of the works, including a 77-day delay for which the employer was responsible.

The conditions of contract provided that the Contractor had an entitlement to an extension of time for delays caused by the employer, but only where:

"The Contractor has complied strictly with the notice provisions of sub-clause SC19.1 and in particular has given the notices required by sub-clause SC19.1 strictly in the manner and within the times stipulated by that sub-clause."

The Contractor failed to get his notice in within the 14 days required and as a result thereof the employer took liquidated damages for the period of his own delay. The matter went to arbitration where the arbitrator held that the delays caused by the employer were acts of prevention making the time for completion at large and removing the employer's right to take liquidated damages. The employer appealed.

In the appeal the contractor argued that the arbitrator was correct in his award. The employer had prevented completion by the date set out in the contract and no extension of time was possible. The contractor relied upon the landmark decision in this situation in **Peak Construction (Liverpool) Ltd v McKinney Foundations (1970) 1BLR 111** where Salmon LJ held:

"If the employer wishes to recover liquidated damages for failure by the contractors to complete on time in spite of the fact that some of the delay is due to the employer's own fault or breach of contract then

the extension of time clause should provide expressly or by necessary inference for an extension on account of such a fault or breach on the part of the employer."

The employer argued that the extension of time clause did provide for an extension of time to be granted on account of a fault of the employer, but that the contractor had itself failed to make use of the clause, and following the **Turner** case, and in particular the comments of Justice Cole (quoted above), it was not an act of prevention if the contractor failed to exercise its contractual rights.

Mr Justice Bailey did not agree. He distinguished the **Turner** case on the basis that the delaying event complained of in that case was not an act of prevention by the employer. He considered that:

"In the circumstances of the present case, I consider that this principle (the principle in *Peak Construction*) presents a formidable barrier to Gaymark's claim for liquidated damages based on delays of its own makings." and

"Acceptance of Gaymark's submissions would result in an entirely unmeritorious award of liquidated damages for delays of its own making (and this in addition to the avoidance of Concrete Constructions (the previous name of Walter Construction) delay costs) because of the company's failure to comply with the notice provisions of SC19."

Accordingly, Mr Justice Bailey upheld the decision of the arbitrator that the prevention principle was applicable even where the contract provided for an extension of time to be granted for delays caused by the employer, but such an extension was unable to be granted because the contractor had failed to comply with a condition precedent for giving notice. The court held therefore that time was at large and that Gaymark could not claim liquidated damages for the delays incurred.

The traditional fears of contract draftsman were therefore realised. Whilst this decision has not yet been considered by the courts in Hong Kong, employers and their advisers when drafting contracts may now well think twice before including notice provisions that are conditions precedent to the grant of an extension of time. ■



### (3) The Architect Instructs

If an ambiguity and/or discrepancy is not resolved by the provisions referred to in parts (1) and (2) above then most standard forms of contract will usually give the Architect the power to issue an Architect's Instruction (AI) to resolve the ambiguity and/or discrepancy. For example, clause 1(2) of the HKIA Form states that:-

*"If the Main Contractor shall find any discrepancy in or divergence between the Contract Drawings and/or Contract Bills he shall immediately give to the Architect a written notice specifying the discrepancy or divergence, and the Architect shall issue instructions in regard thereto".*

The first question to arise is whether or not the Main Contractor is obliged to search out such ambiguities and discrepancies in the contract documents. The words *"If... shall find"*, suggest that the Main Contractor is under no positive express obligation to search out errors between the Contract Drawings and/or the Bill of Quantities, although once discovered, the Main Contractor is under a duty to immediately advise the Architect.

Whether the resultant AI constitutes a variation under clause 11 (and a need to adjust the Contract Sum) will depend upon whether the AI has resulted in a departure from the *"contract intention"*. In this respect, the Architect may instruct a resolution of a discrepancy, which is a departure from the *"contract intention"* in which case the Main Contractor would be entitled to additional payment. The principles to follow when deciding the *"contract intention"*, where an ambiguity and/or a discrepancy arises, or what rules govern the contractor's entitlement to compensation, are those stated in the contract documents and, if those rules do not resolve the issue, then the principles of common law should be followed.

Take a simple example of a bathroom window opening in an external wall which is detailed on both the structural and bathroom layout plans but where each plan shows the opening in a different location. If the bathroom layout plans were not dimensioned and included the words *"Do Not Scale Drawing"* then it would seem likely, on the facts, that the *"contract intention"* was to set out the opening using the dimensions shown on the structural layout plan. If both plans were differently dimensioned, and the BD approved plans offered no assistance in resolving the discrepancy, then the *contra proferentem* rule would apply. However, if the Architect wanted the window located as shown on the bathroom layout plans when the Main Contractor had already constructed the opening as shown on the structural layout plans, he can order such in the AI issued to resolve the discrepancy.

However, in this example, the Main Contractor would almost certainly be entitled to additional payment for revising the opening.

Therefore, this AI would give rise to both an entitlement to time and/or money under:-

- Clause 11(4) - the valuation of a variation;
- Clause 11(6) - direct loss and/or expense;
- Clause 23(e) - an extension of time if the progress of the Works was delayed; and/or
- Clause 24(c) - if there is disturbance of the regular progress of the Works.

### SINGAPOREAN PERSPECTIVE

Mr. Duncan Wallace QC, the author of *Hudson's Building and Engineering Contracts (10th Edition)* and the *"Singapore Institute of Architects Building Contract"* (SIA Form), is critical of the lack of clarity found in such provisions of most UK-originated standard forms of contract (which includes the HKIA Form). He attempted to deal with ambiguities and discrepancies in the SIA Form by the following provisions:-

- the contract documents are read and construed as a whole;
- no special priority is given to any of the contract documents other than that accorded by law;
- the *contra proferentem* rule is not to be used to interpret the Articles or Conditions of Contract;
- a set of Guidance Notes which supplement the SIA Form may be considered for the purpose of assisting the Architect in resolving any ambiguities or discrepancies;
- the Architect is obliged to issue an AI to resolve any ambiguities or discrepancies;
- time and/or money is dealt with in the following ways:
  - (i) for reconcilable ambiguities or discrepancies, the contract sum is only adjusted if the Architect's requirements vary from the intention of the contract documents when read as a whole;
  - (ii) for irreconcilable ambiguities or discrepancies, the contract sum is only adjusted and time granted if, on the facts, the contractor has:-
    - been reasonably misled at the time of tender; and
    - this has either been to his detriment (i.e. the contract sum is adjusted up) or advantage (i.e. the contract sum is adjusted down).

Even these provisions, which are far more specific than those in the HKIA Form, require an expert knowledge of the law when it comes to interpreting the *"contract intention"*.

### SWIRE PROPERTIES' APPROACH

Clauses 3(11) and 3(12) of Swire Properties Ltd's Standard Form of Building Contract are similar to the HKIA Form with two principal distinctions:-

- clause 3(12) expressly limits time and/or money entitlements arising out of ambiguities and/or discrepancies to *"... matters which could not reasonably have been anticipated at the time of tender by an experienced Contractor"*. Any entitlement to compensation is therefore based upon a criterion of reasonable foreseeability; and
- the contract documents are read as being mutually explanatory of one another with paramountcy conferred on the Conditions.

Unlike most other standard forms of contract, the Swire Form is accompanied by a set of comprehensive *"minimum standards"* intended to cover all aspects of contract documentation and administration for large building projects. These documents include:-

- Schedules to the Conditions setting out the contractor's obligations with respect to the following:-
  - (i) General Definitions;
  - (ii) Contract Review;
  - (iii) Planning and Progress Reporting Procedures;
  - (iv) Schedule of Information;
  - (v) Design and Co-ordination;
  - (vi) Main Contractor's Management & Supervisory Personnel;
  - (vii) Quality Assurance;
  - (viii) Insurance and Levies;
  - (ix) Powers of Resident Site Staff;
  - (x) Milestones;
  - (xi) Safety;
  - (xii) Fire Precautions;
  - (xiii) Tender Procedures for the Appointment of Named Sub-Contractors and Suppliers; and
  - (xiv) Environmental Measures.

- the wording and form of bonds, warranties and guarantees executed pursuant to clause 31 of the Conditions;
- a *"minimum standards"* for the Preliminaries Bill and the Preamble to the Bill of Quantities;
- Standard Forms of Building Sub-Contract and Building Supply Contract for works carried out by Named Sub-Contractors and Suppliers (both integrated with the Main Contract);
- a sub-contract tier of *"minimum standards"* to accompany the Sub-Contracts and Supply Contracts including preliminaries, bonds, warranties and the like; and
- miscellaneous *"minimum standards"* for the Conditions of Tendering, Form of Tender, Letter of Intent and Letter of Acceptance.

By maintaining a set of *"minimum standards"*, which are consistent and integrated, the possibility of conflict between the various documents is avoided. Whilst particular requirements for specific projects have to be taken into account, the *"minimum standards"* are drafted to cater for most normal circumstances on large building contracts. However, ambiguities and discrepancies can still occur between the *"minimum standards"* and other contract documents, particularly specifications taken from consultants' archives and introduced without vetting.

### CONCLUSIONS

An architect, when left to pick up the pieces of poor drafting (whether of his own making or some other consultant), may tend to interpret the *"contract intention"* on the basis of what the contract documents *"should say"* or *"were meant to say"*. This is clearly wrong and, if a dispute develops, the courts or an arbitral tribunal will revert to the common law rules for construing and interpreting documents and give effect to the words actually used. The key of course is to ensure that the contract documents accurately reflect the author's intentions at the time of drafting. The best cure for ambiguities and/or discrepancies is, after all, one of prevention by carefully and consistently drafting the contract documents in the first place.

For further information contact [bera@netvigator.com](mailto:bera@netvigator.com) 





# COMMERCIAL MORTGAGE-BACKED SECURITIES (CMBS)

## AN ALTERNATIVE DEBT FINANCING INSTRUMENT FOR DEVELOPERS

Jim Yip, AHKIS, MRICS

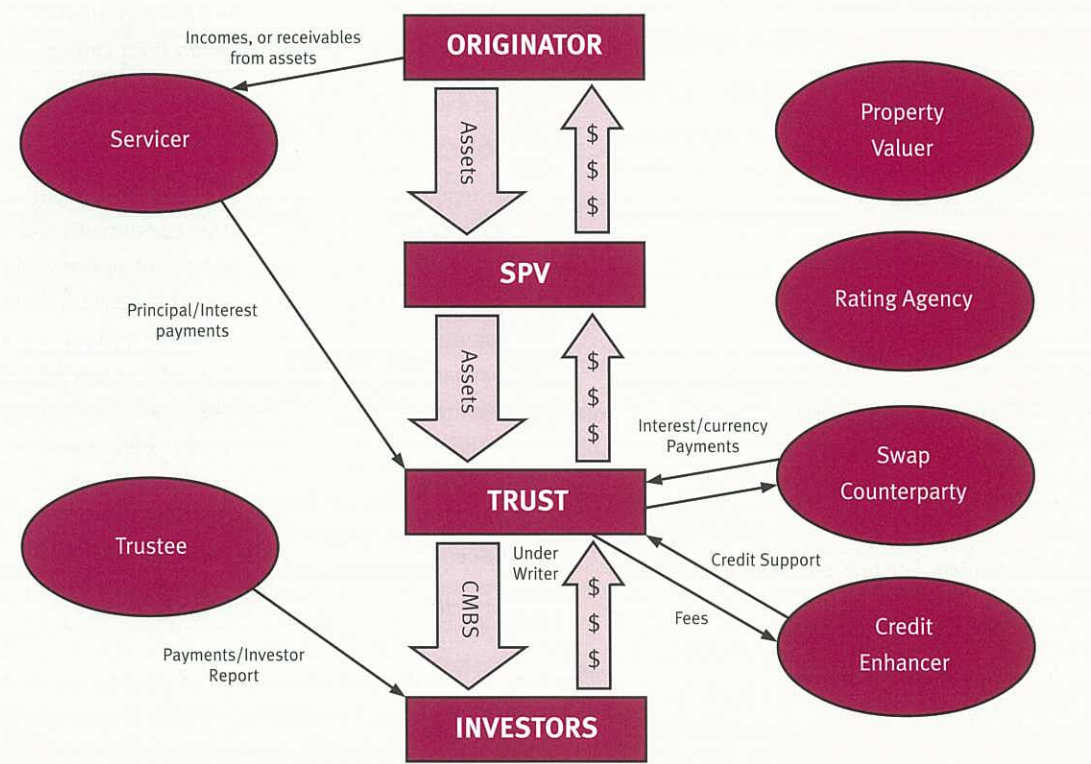
Surveyors deal with many aspects of property assets. We manage them, value them, lease them and dispose them when the time is ripe or price is right, for achieving one purpose - enhancing returns on assets. Increasingly we use financial knowledge in asset management. One area of our growing interests is securitisation.

At the end of 2000, Paliburg, a developer that has encountered liquidity problem with negative working capital since 1998, successfully raised a funding of HK\$1.4bn through issuing commercial mortgaged backed securities (CMBS). Readers might question why investors would wish to lend such a big sum of money to Paliburg at that moment as many

banks had actually stopped making new loans to Paliburg.

### COMMERCIAL MORTGAGE-BACKED SECURITIES

The CMBS are debt securities using commercial assets as collaterals and incomes generated from the property assets are used to pay back the loans and the interests. The commercial mortgages as underlying assets are normally provided by a special purpose vehicle (SPV) which then issues CMBS and the sales proceeds from the securities will then be returned to the property owners via the commercial mortgage loan. CMBS is widely considered as an innovative financing instrument in the debt market.



An Illustration of CMBS Structure

### CMBS FOR PALIBURG

The risks involved in Paliburg's deal were actually very much contained. Kowloon City Plaza in Kowloon City and Paliburg Plaza in Causeway Bay, two "crown jewel" commercial properties owned by Paliburg, were pooled into the SPV - Commercial Plaza Securitisation Ltd. Thanks to the strong recurring rental incomes from the two properties, the CMBS obtained very high rating from Moody's, i.e. Aaa - a rating unlikely obtained by the financially-distressed parent company.

In addition, the default risk of the CMBS solely rests on the performance of rental incomes from the two properties. Any credit deteriorations to Paliburg would not bring any repercussion to the CMBS holders. CMBS holders have the first priority of claim on the two assets that are being pledged in the securitisation in case of default.

As a result, the \$1.4bn CMBS were sold off to institutional investors including insurance companies and pension funds. Paliburg used the proceeds to pay back the outstanding mortgages of the two commercial properties and the remaining surplus was used as working capital for the company.

### CMBS FOR CHINESE ESTATES

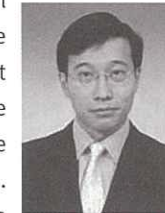
Not all developers used CMBS as a last resort in fund raising. Local developer, Chinese Estates used securitisation because it offered more attractive pricing than the conventional financing methods. Chinese Estates at the end of 1999 issued CMBS with Windsor House in Causeway Bay as an underlying asset to raise HK\$1.8bn. Windsor House, a high quality investment property in the bustling Causeway Bay retail market, had a strong cashflow.

The Chinese Estates's maiden CMBS was the first Hong Kong commercial mortgage-backed issue that was rated Aaa, even higher than the then Hong Kong's local currency ceiling of Aa1. The

top ratings from Moody's permitted Chinese Estates to raise funding more cost effectively than a corporate loan or secured bond.

### BENEFITS OF CMBS

"Issuing CMBS has three main benefits: lower pricing, improved liquidities and diversification on lenders," says Andy Lai, head of financial engineering at SG, the investment bank that structured and arranged the CMBS deals for Chinese Estates and Paliburg. "Towards the end of 1999 there was a negative sentiment in the Euro and US markets due to the Y2K concern. To improve the market liquidities, we structured a CMBS for Chinese Estates and they were oversubscribed."



Andy Lai

For Paliburg, although it also enjoyed benefits of lower pricing and improved liquidities as much as Chinese Estates did, diversification was the main driver for CMBS. The CMBS were subscribed by investors who were not existing lenders of Paliburg and some of them were foreign funds, which previously had no exposure to the Hong Kong property market.

"The HK\$1.4bn CMBS represented a major step forward in Paliburg's debt restructuring," says Andy. "At that time Paliburg was unable

to restructure its debts within existing lenders and suffered from high default interest. Our structured CMBS enabled Paliburg to raise funding and reduce its financing cost as well."

One remarkable feat in the Paliburg's CMBS was that the complex structure has remained intact and continues to perform despite Paliburg announcing in February its problems in paying two exchangeable bonds.

"When we designed the CMBS structure, we had already assumed a liquidation scenario for Paliburg. We have separated Paliburg's interests from the securitisation structure so as to ensure that the two assets pledged in securitisation would not be challenged by liquidators or its quality downgraded by rating agencies in that worst situation," explains Andy.

SG has gone one step further to protect the interests of the CMBS investors. Since Paliburg Plaza is also the headquarters of Paliburg and its affiliates, SG built and sized a pre-funded "Liquidity Reserve" to cover the property reinstatement costs and potential loss in rental income due from the in-group tenants.

The Loan-to-Value (LTV) ratio in the Paliburg's CMBS of HK\$1.4bn was actually quite high - LTV of 68% based on Moody's valuation, compared with other CMBS transactions, for example, 42% for Windsor House and 38% for Harbour City (see Table 1 below).

Date	Properties	Funds Raised	Developer	Property Consultant	Remarks
Sept 1995	174 luxury apartments in Queen's Garden, Central	HK\$959mn	Eton Properties	JLL	Hong Kong's first single asset securitisation
Nov 1996	425 apartments and 779 carparks in Pacific Palisades, North Point	HK\$1,045mn	Sino & the Ng family	JLL	
Mar 1997	5 commercial buildings comprising 2mn sq.ft. of offices & 0.5mn sq.ft. of retail space	HK\$2,340mn	Sino & the Ng family	JLL	
Feb 1999	7 commercial buildings comprising 1.7mn sq.ft. of offices and 0.9mn sq.ft. of retail space	HK\$4,485mn	Wharf	JLL	Largest securitisation so far in Asia
Jun 1999	21 commercial, residential and industrial properties comprising 2.445mn sq.ft. & 3,385 carparks	HK\$2,356	Sino	JLL	
Dec 1999	Windsor House, Causeway Bay	HK\$1,821mn	Chinese Estates	Chesterton	First CMBS to be wholly denominated in Hong Kong dollars
Sept 2000	Kowloon City Plaza, Kowloon City and Paliburg Plaza, Causeway Bay	HK\$1,400mn	Paliburg	Vigers	First Hong Kong CMBS with the originator in liquidity problem

Table 1: Securitisation Deals in Hong Kong



Given Paliburg's tight financial position, one would think it might be better for Paliburg to dispose all its interests in these two properties and realize the full market value. In fact, for a long period of time leading up to the issuance of the CMBS at the end of 2000, Paliburg had been active in seeking buyers for the two properties, but to no avail.

Obviously Paliburg didn't want to part the assets at big discounts and destroying shareholders' values. "One beauty of CMBS for property developers is that it can help release value while retaining control of ownership and future growth of assets," says Andy. "We understood Paliburg was undertaking a planning application for additional commercial floor areas on top of the existing Kowloon City Plaza and the market value had not yet factored into this development potential. The CMBS has just done that job in preserving value for the property owner."

In the UK, developers also use asset securitisation as an alternative to circumvent the capital gains tax liability arising from an actual disposal of property assets.

#### OBSTACLE TO OFF-BALANCE SHEET FINANCING

However, one major distinction between the UK and Hong Kong securitisation market is that most of the securitisation issues in Hong

Kong are not of the off-balance sheet structure i.e. removing the property asset from the issuer's balance sheet. The outcome of off-balance sheet financing can help an issuer improve various financial ratios such as the return on equity and gearing level.

"The low investment yield in Hong Kong properties has actually impeded developers using off-balance sheet technique in securitisation," explains Andy. "Prime properties in general command a yield of 4% - 6% whereas interest rates on loans would fluctuate from 6% to 10%. In securitisation, you have to transfer your assets to a SPV, if you sell at full market values, then the rental incomes from the property asset must be able to pay back the financing costs. Unfortunately this is quite rare in Hong Kong at the current market environment."

#### COMPARISON WITH CONVENTIONAL FINANCING METHODS

Compared with the traditional bank mortgages financing, CMBS has its unique advantages. Because the bonds are backed by tangible assets rather than the credit-rating of a corporate borrower, rates are lower. CMBS is a non-recourse loan to the issuer as it is fully secured by the underlying property asset (see Table 2 below).

Method	Bank Loan	Share Placement	CMBS
Example	Kerry Property in June 2001 raised HK\$6bn through a 5-year unsecured syndicated loan at an interest rate 50bps over HIBOR	Sino Land in January 2001 raised HK\$783mn through a share placement	Paliburg in September 2000 raised HK\$1,400mn through securitisation of two commercial properties
Advantages	Easy and quicker in arranging finance; Lower arranging cost	No interest cost; Fast and efficient to raise capital	Lower interest rates; Non-recourse to originator; Release value of asset and retain future growth potential; Lenders diversification
Disadvantages	Interest expenses cut into earnings; Requires higher corporate rating; Stringent loan covenant	Dilution effect in both earning and net asset value per share; Unfavorable in a depressed stock market	Complex deal structure; Higher upfront cost

Table 2: Examples of Financing Methods by Developers

#### STAGNANT ACTIVITY IN CMBS

The depressed stock prices barring access to equity market even for the top-rated property companies should have driven developers to look for an alternative source of capital. However, it has not triggered a proliferation of CMBS deals in the Hong Kong market. The CMBS activity has actually gone quiet after the Paliburg deal. The ample liquidities in the banking sector and the sluggish loan growth market have all contributed to the demise of CMBS activity.

Sino Land, once an active issuer in asset securitisation, has now requested for a 'clean loan' (no collaterals offered) in fund raising, indicating that borrowers nowadays have an upper hand amid the intense competition within the banks.

"It is tough for securitisation arrangers to compete for clients, which have access to cheaper funds. Top-tier companies in Hong Kong are now paying a margin as low as 40bps to 50bps for term transactions. There is no incentive to do securitisation and it does not make a difference whether an arranger creates a triple A or double A paper," says Andy.

However, as the local economy is miring in a slump underpinned by sagging corporate earnings, a credit squeeze by the banks will be on the rise and the banks will be more reluctant to lend. Alternative financing instruments like CMBS will be back in vogue.

#### SURVEYOR'S ROLE

Surveyors have a significant role to play in securitisation. Vigers was the property consultant in Paliburg's CMBS. They provided services including a market valuation report, building survey report, which recorded all the historic building capital expenses, any building defects and projection of future capital expenditures, both recurring and nonrecurring in nature, as well as property management back-up facilities. Vigers secured the assignment after the top management had an interview with personnel from Moody's.

"Besides giving a valuation figure for the property assets concerned, valuers provide further detailed and in-depth market information and analysis to the issuer. We analyse the macro economy as well as the segmental property performance, review tenant covenants, market competition from nearby properties, and project future supply and price trends. In our report we have to lay down all the assumptions we have made in our valuation," says Mr. Yu Kam Hung, director of the valuation department at Jones Lang LaSalle (JLL) and an expert in valuation for

securitisation purpose. JLL was the property consultant for the Harbour City CMBS - the largest securitisation thus far in Asia.

#### FUTURE DEVELOPMENT IN SECURITISATION

In Hong Kong, securitisation, as an alternative financing vehicle, taps into the debt market and its development has not yet evolved into the equity market. We have not seen any real estate investment trusts (REITs), another breed of securitisation, in the local market.

"REITs in the USA are based on a specific provision of the Inland Revenue law which makes such dividend payments tax exempt. CMBS, on the other hand, is a more market driven transaction. Unless Hong Kong adopts a law similar to the REIT law in the USA, there is obviously no scope to have REITs here. The only other country, which to my knowledge has a similar structure, is Japan," notes Vinod Kothari, executive director of Asian Securitisation Forum.

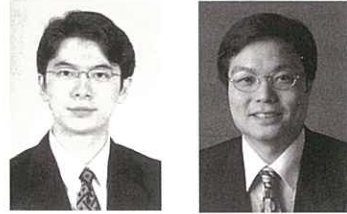
#### WHAT IS ASSET SECURITIZATION?

Asset-backed securities are securities, which are based on pools of underlying assets. These assets are usually illiquid and private in nature. A securitization occurs to make these assets available for investment to a much broader range of investors. The "pooling" of assets makes the Securitisation large enough to be economical and to diversify the qualities of the underlying assets. A special purpose trust or instrument is set up which takes title to the assets and the cash flows are "passed through" to the investors in the form of an asset-backed security. The types of assets that can be "securitized" range from residential mortgages to trade receivables and even music royalties. The asset-backed security usually qualifies for a top rating and enables the issuing company or bank to raise funds at a very attractive rate, while freeing up capital and retaining customer relationships and servicing revenues.

Source: Professor Ian Giddy, Stern School of Business, New York University. Professor Giddy is also the author for "Asset Securitization in Asia". For details please visit the website at <http://asiansecuritization.com/>

If you have any comments on the article, please feel free to e-mail to Jim Yip at [jim@aisl.com.hk](mailto:jim@aisl.com.hk)





Eric Poon

Yu Kam Hung

# OVERVIEW OF THE PRC LAND SYSTEM

Yu Kam Hung, FRICS FHKIS, Director of Valuation Advisory Services Department, Jones Lang LaSalle  
Eric Poon, Valuer of Valuation Advisory Services Department, Jones Lang LaSalle

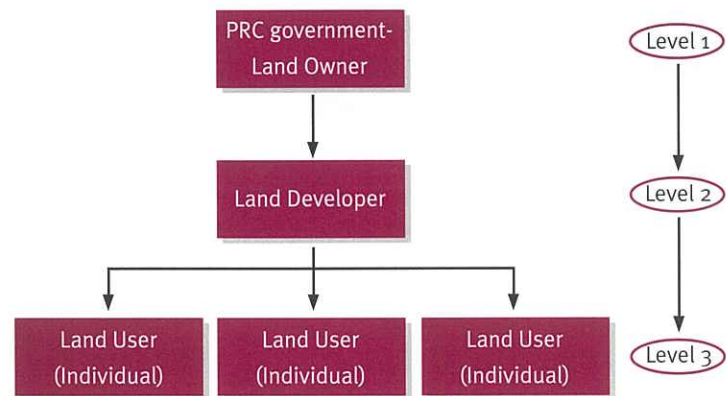
China, after 1949, has become a socialist country. One of the important operational features of a socialist economy is that economic production will be centrally planned and organized. Economic resources, including land, are all owned by the state, which will determine the allocation to various productive arms through administrative or non-market means. Under this system, the use of urban land was virtually free of charge in China.

In 1978, the China government began to realize the economic value of land, which could be utilized to finance the city development. As a result, the land premium and land use fee, aimed at raising funds for urban infrastructure construction was introduced. This earmarked the outset for the changing land administration of the policy maker. Until 1987, the Chinese policy maker moved one step forward towards the establishment of an urban land market, the first land auction was held in one of the 'Special Economic Zones' - Shenzhen. Land use right was permitted to be transferred to private individuals.

There are now three main categories of land ownership in China:

1. Rural land which is owned by the state but assigned collectively to the peasants without a specified time period;
2. Urban land owned by the state and allocated to various work units;
3. Leasehold land owned by the state and its land use rights are sold to the users for a certain time period (50 years or 70 years).

Owing to the present government policy, a real estate market is growing. Basically, the market can be divided into three levels.



Level 1 represents the land market for the transference of land use rights, and it is the China Central Government and the provincial government having the overall control of this market. Transference means the government will grant the leasehold land use right to the grantee for specified uses and a certain period of time. A lump sum payment known as land premium has to be payable to the government by the grantee to secure it.

Some of the main points concerning this market are listed as follows:

1. Granting of land use right is under Chinese government control.
2. Land developers bidding for land are subject to a financial check to ensure their ability to complete the whole development.
3. Use of the land is subject to the Master Plan and Land Use Allocations.
4. The government determines the land price.
5. There are three different ways of granting land use right - negotiation, tender or auction.

At Level 2, it is the land developers who transfer the land use right to private individuals by the way of selling or leasing the built units. It should be noticed that the building units on the land are inseparable with land, which means land use right goes with the building unit and the lease terms remain unchanged.

Level 3 represents the horizontal transference of land use right among individual land users.

Principles applying in this level are similar with those in Level 2.

Within the PRC land system, various documents (concerning land title, site area, construction work, sale of building, etc.) should be carefully handled. The following are some of the essential documents:

## TITLE OF THE LAND

### State-owned Land Use Rights Grant Contract

This is the contractual document signed between the state or provincial government and the private land developer who has been granted with the land use right through negotiation, land auction or tendering. The developer is bound by the terms set in the document.

## State-owned Land Use Certificate

After the land premium has been fully settled in accordance with the terms of the State-owned Land Use Rights Grant Contract, this certificate will be issued by the relevant authority.

## USE OF THE LAND

### Master Plan and Land Use Allocations

To determine the use of a particular land, two major documents should be taken into consideration. One is the State-owned Land Use Rights Grant Contract, which should have stated the use of the land. The other is the Master Plan and Land Use Allocations, which is prepared by the state or provincial government to demonstrate the overall land use pattern in the city. The land use stated in both documents should be the same. Besides, developers can take this as a reference to examine the authority's planning intention and to determine their future development strategy.

## AREA AND BOUNDARY OF THE SUBJECT SITE

### Red-Line Drawing

This drawing is prepared by the relevant Municipal Land Administration Bureau to indicate the statutory boundaries of the entire subject site that the developer has been granted with the land use right and it will only be issued after land premium and all relevant costs incurred to the government have been paid off.

## CONSTRUCTION WORK

### Construction Land Use Planning Permit

This is the permit issued by the relevant government department to allow the use and development of the subject site.

### Construction Works Commencement Permit

This is the permit issued by the relevant government department to allow the commencement of the construction work on the subject site.

## COMPLETION OF CONSTRUCTION

### Construction Completion Certificate

The relevant government department will issue this certificate to certify the completion of the whole construction work.

## SALE AND PRE-SALE OF COMMODITY BUILDING

### Real Estate Ownership Certificate/Real Title Certificate

Take residential development as an example, the land developer should first apply for Real Estate Ownership Certificate from the relevant government department if the developer plans to market the completed building units. Flat purchasers are actually buying the real estate ownership rather than the land use right. However, as mentioned before, building units on the land are inseparable with land, which means if a purchaser buys up the whole building on the site, this purchaser should possess the land use right of the site theoretically.

## Commodity Building Pre-sales Permit

Before the completion of the building unit, the developer may sell all or part of the building units to release the financial burden. However, pre-sale for building units needs to get this permit from the relevant government department.

## Overseas-sale of Commodity Building Permit

There are two different types of commodity building in China. One type is for domestic sale and the other is for overseas-sale. Considering the commodity building for overseas-sale, a permit from the relevant government department is needed.

## NATURE OF THE LAND DEVELOPER

### Business License and Joint-venture Agreement/Contract

Under the Chinese government policy, different company nature will be under different government treatments (e.g. taxation). If it is a Joint venture between a foreign and Chinese firm, a joint-venture agreement/contract may have to be presented for government verification. Also a company needs to apply for a business license issued by the relevant government department in order to conduct business in China.

In addition to the above-mentioned documents, tax arrangements should also be considered. Since different provincial governments adopt different tax arrangements, we take Beijing as an example to illustrate the general picture.

## REAL ESTATE TAXES

### Sales Transaction Related Taxes and Fees

In connection with the transactions of land use rights and/or buildings, there are several taxes and fees that a purchaser generally has to pay, mainly as follows:

• Deed Tax	4% of the total purchase price
• Stamp Duty	0.05% of the total purchase price
• Transaction Fee	0.5% of the total purchase price
• Notarization Fee	Approximately 0.03% of the total purchase price
• Real Estate Registration Fee	RMB 0.3/m <sup>2</sup> gross floor area (Approximately US\$0.036/m <sup>2</sup> )

### Urban Real Estate Tax

Urban Real Estate Tax applies to the holders of land use rights in China. The tax is levied at 12% on gross rental income per annum. For owner-occupied properties, it is levied at 1.2% on 70-90% of the book value of the property. However, foreign property owners that use the property for non-business purpose are exempted from this tax.



### Land Appreciation Tax (LAT)

LAT was introduced in 1994. It aims at curbing speculative property investment. LAT applies to the sale of real estate and is levied on the seller at rates of between 30% and 60% on profits from real estate sales. The tax is applied as follows:

Profit Band	LAT Rate (%)
On the portion of profit not exceeding 50% of deductible items	30
For the portion over 50% but not exceeding 100%	40
For the portion over 100% but not exceeding 200%	50
For the portion exceeding 200%	60

Costs deductible for the calculation of profit includes the original cost of Land Use Rights, land development cost, construction costs, interest, business tax and stamp duty. A property developer may deduct 120% of the original cost of Land Use Rights, land development cost and construction costs.

In practice, there are certain ways to avoid LAT, for example, transfer of

properties may be effected by transferring property-holding company's majority shares to the purchaser or issuing new shares, etc.

### Business Tax

Business Tax is levied at 5% on gross rental income for rental properties and 5% on total sales value for property sales.

### CONCLUSION

To sum up, the urban land reform has a great impact on China's economy and provides a supply of land into the market to establish a functioning property market. However, the land reform is still in its early stage. The above mentioned land system is only a general overview and there is no single, centralized land system in China at the present moment since the land system is subject to various adjustments made by different provincial government. Also the land reform prevails only in the eastern region of China but not the western region. Therefore, procedures and legal documents concerning land investment in China's real estate market should be handled with great care. ☒

Surveyor's  
Surf



## SURVEYOR'S SURF

Stephen Chung, Zeppelin Real Estate Analysis Limited



Imagine an alien creature visiting Earth and trying to find our leaders (Don't aliens always say "Take me to your leader" in movies?). Will "it" end up meeting President Bush, Jiang and Putin? Probably not. Because the alien would have thought our babies (defined as those less than a year old) were the leaders! From the alien's viewpoint, and assuming aliens can hear, whenever the little ones make a sound (in alien's language = a command), the larger ones (i.e. the adults, or more precisely the parents) would feed them, clothe them, soothe them, say cute things to them, hand over Pokeman toys to them, entertain them, and fanatically try to please them by dressing up in a Mickey Mouse costume. "Hmm," the alien

thought, "the smaller ones must be the feudal masters while the larger ones are the slaves. I'll think I will speak to the smaller ones". That's the approach adopted by many (former) internet investors as well i.e. put the money into where the noise is the loudest and this was hailed as instinctive investing. Later, they found out that "extinctive" investing might have been a better description. Hence, this column tries to seek out the quieter websites who may turn out to be more gigantic than they actually appear:

a) <http://www.globalsoftwaresolutions.net/realestate/realestate.htm>

This site offers various categories of links to other potentially useful sites including ones related to real estate. It is USA-based, though the applications may be enlightening and illustrative for prospective users from all over

the world. It also offers links to useful data and journalistic resources.

b) <http://people.ft.com/people>

This is part of the Financial Times' website and contains brief introductions on many prominent people in the business and professional fields including the chief officers of major corporations. It has a European flavor though there are also sections on Asia business and news. A kind of a free Who's Who.

c) <http://www.chinavista.com/business/cnedc/periodical.html>

This site contains some useful economic and real estate statistical charts, though 1999 seems to be the latest year available. It may be useful for brief researches and for gaining an initial impression.

d) <http://www.profsurv.com/>

This is the website of 'Professional Surveyor', a USA-based technical magazine. It has an archives section offering articles for free in addition to other useful link resources. This may also offer an opportunity to see how surveying is carried out in other parts of the world, especially for land surveyors.

e) <http://www.cfma.org/index.asp>

CFMA stands for Construction Financial Management Association and the site operates like a portal with links to relevant sites, publications, conferences, and technical workshops etc. The focus is on construction related issues including financing, risk management and cash flow techniques.

f) <http://www.reri.org/>

RERI stands for Real Estate Research Institute and offers articles for subscription. Nonetheless, there is usually a free abstract version of each article and thus visitors may be able to read a brief summary of the topic concerned prior to deciding if the full article would be suitable.

g) <http://www.cuhk.edu.hk/hkwww.htm>

This is part of the Chinese University of Hong Kong's website and contains lists of Hong Kong based websites under various categories

including real estate companies and so on. One can also submit a website for free inclusion. Notwithstanding that it may not be complete in a sense that some websites may not be included therein, it is comprehensive and easy to search enough to make it a good resource for both academic and casual users.

h) <http://www.webshots.com/>

Tired of just having a plain Windows boot-up screen? Well, this site contains hundreds of "wallpapers" which can be downloaded for free. Topics range from nature, motorcars, aircrafts, and so on, to even World War Two photos. There are enough photos to last for years even if the wallpaper is changed each day.

i) <http://home.hkicable.com/kenlkk/>

Know what "AE", "J/J", or for that matter "g\_g", and ":-~)" mean? If not, welcome to the Club of ICQ Dummies! To partly remedy the situation (so that for instance you may better communicate with your kids and the young, or pretend that you are young at least while surfing the net), visit this site. It contains a useful list deciphering the above samples and more.

j) <http://oldjimstation.tripod.com/>

This is a personal website of one of our

member surveyors, Mr. Jim Yip, who is in the General Practice Division and is a real estate research analyst. Jim is kind enough to share his thoughts, views, know-how and writings (on a variety of topics) ranging from property markets to weddings with fellow members. His site has also won awards for presentations etc.

Being a "Baby-Boomer" [i.e. people born within year 19xx after WWII and year 19yy], the author has in recent years started to realize that certain things may give away your (real or really old) age:

- 1) that you know how to use Lotus 123 (i.e. before you learn Excel)
- 2) that your favorite rock band is Led Zeppelin, or worse some pop groups like the Beatles and Rolling Stones, or even worse still the Platters and Elvis Presley
- 3) that you think 'surfing' means only the type involving a surfboard
- 4) that you think "o" on a document is a typing error
- 5) that you cannot comprehend 50% or more of whatever is written in this column (Author's note = boy, you must be a real fossil!)

Please send suggestions and comments to [stephenchung@real-estate-tech.com](mailto:stephenchung@real-estate-tech.com) ☒

## UPDATE OF GOVERNMENT PRACTICE NOTES

Department	Practice Note/Reference#	Description	Date	Home Page
Works Bureau	Technical Circular no. 10/2001 Technical Circular no. 17/2001	Granular and Geotextile Filters. Electronic Dissemination of Invitation Documents for Consultancies.	3 August 2001 1 August 2001	<a href="http://www.wb.gov.hk">www.wb.gov.hk</a>
Fire Services Dept.	Circular Letter No. 2/2001	Introduction of Revised Certificate of Fire Service Installations and Equipment - F.S.251 (Rev. 7/2000).	30 May 2001	-
Architectural Services Dept.	-	Building Cost Indies	29 August 2001	-

• Please note that the above Practice Notes can be downloaded from the corresponding home page.





初生嬰兒  
以至  
老人家，  
我們亦  
照顧周到。

一般保險公司的門診醫療保障只限於65歲以下人士，如退休後需要不時就診，醫療費用支出便相當龐大。

蘇黎世保險全新推出的「門診醫療計劃」，投保年齡由初生15日至70歲（續保更達80歲），而且保費相宜，並設有三項計劃，全面關懷您家中每位成員。

您可無限次享用普通門診服務，另包括專科、物理治療、中醫及跌打服務<sup>1</sup>。5至70歲投保人每月只需付出低至HK\$180，便可享有全面的門診醫療保障，保費更不受年齡限制<sup>2</sup>，亦不會逐年遞增。

只須預先電話預約，並於就診時出示您的身份証，即可使用以上各項服務，無須墊支任何費用<sup>3</sup>，更免除繁複的索償手續，方便快捷。

查詢有關保障範圍及保費詳情，請致電香港測量師學會會員  
投保熱線2903 9393。

其他特點：

- 超過500位「網絡醫生」遍佈港九新界
- 免費HK\$100,000個人意外傷亡保障
- 24小時全球緊急醫療支援保障
- 14天保單審閱期 - 若保障不符合您的需要，可把保單退回，保費亦將獲全數退還



首100名成功投保會員，  
可免費獲贈 OSIM 健康產品一份。

<sup>1</sup> 詳情請參閱保障範圍

<sup>2</sup> 5歲以下及70歲以上之受保人需分別繳付25%及15%之附加保費

<sup>3</sup> 中醫及跌打服務之自負費用分別為\$25及\$45，不包括承保範圍以外之服務

\* 此保障由鷹星保險有限公司承保，鷹星保險乃蘇黎世金融服務集團成員

投保熱線 2903 9393 傳真熱線 2903 9340

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www.surveyors.zurich-on-line.com

其他保障

