

# Surveying

news



CHAN Hak

## Message from the President

I led a team consisting of members of the International Committee to attend the International Federation of Surveyors (FIG) General Assembly in Washington, DC. in the period from 21 to 26 April 2002. This team with the concerted effort of its members successfully accomplished all its tasks.

Firstly, Mr. T.N. Wong, our former President, was appointed the first elected Vice President of the Federation for 2003-2006. This is the first time FIG has an elected Vice President and a Council member from Asia. It is indeed a great honour for one of our members to get this prestigious post. Our Institute has pledged to support Mr. Wong during his term of service in this post.

Secondly, Mr. Stephen Yip, our GPD member, was appointed as Commission Chair for the term of office 2002-2006 of Commission 9: Valuation and the Management of Real Estate. Mr. Yip has been serving as Vice Chair in the Commission for some time. His appointment as Chair will further elevate Hong Kong and its surveying profession in the international scene.

Thirdly, our Institute had successfully bid to host the FIG Working Week 2007. Though facing no competition we still had to negotiate with the Council on the details up to the last minute before the presentation at the first session of the General Assembly. Through the excellent preparation work by the International Committee and the support of the Hong Kong Tourism Board in providing a very breathtaking video on Conference Facilities in Hong Kong as well as several attractive souvenir items, overwhelming support was received from member associations that a unanimous decision was made to approve Hong Kong to host the Working Week 2007 without having to wait until the second session to decide.

Finally, we succeeded in stopping the voting in the General Assembly on the application from a Hong Kong organization for admission as member association of FIG this year. Our main points of objection are: HKIS is the leading professional surveying institute representing the five disciplines in Hong Kong; it is a professional surveying institute constituted by an ordinance; it is a local professional qualification acceptable for appointment as surveyors in the Government; it is a local professional qualification recognised under relevant ordinances. The Council finally agreed, that instead of making a decision on the application in the second session, to recommend to the General Assembly to postpone the voting

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SURVEYING is the newsletter of the HKIS. It is distributed to members, students and friends of the surveying profession free of charge. Anyone wishing to receive a copy may contact the office of the Institute.

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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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Suite 801, Jardine House, Central, Hong Kong.  
Tel: 2526 3679 Fax: 2868 4612  
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on the application until 2003 and to establish a FIG Forum in the HKSAR as referred to in the Additional Agenda 2 below. This recommendation received overwhelming support from the members present, namely, 47 in favour, 3 against and 1 abstention.

For this successful mission I wish to express my heartfelt thanks to our members who either took on the challenging jobs or contributed to the various tasks and to the Hong Kong Tourism Board for their support.

25 April 2002

Agenda 3, General Assembly 2002

### INTERNATIONAL FEDERATION OF SURVEYORS

#### FIG 25<sup>th</sup> GENERAL ASSEMBLY

#### ADDITIONAL AGENDA 2

for the meeting to be held at the Marriott Wardman Park Hotel, Washington, DC., USA, Marriott Ballroom on 26 April 2002

#### FRIDAY 26 APRIL

Friday 26 April, 10:30am – 1:30pm, Marriott Ballroom  
General Assembly, Second Session

#### 29.2 Member Associations

The Hong Kong Institute of Engineering Surveyors (HKIES), Hong Kong, China

Since the General Assembly meeting on Monday the Council have had a number of helpful meetings with representatives from both the HKIS and the HKIES. In addition the Council has conducted an extensive review of the application from the HKIES.

**Motion:** That the General Assembly, on the recommendation of the Council, agrees to:

- Postpone the vote on the application from the HKIES until the FIG General Assembly meeting in 2003, and in the intervening period
- Establish an FIG Forum in the HKSAR (Hong Kong Special Administrative Region). The terms of reference of the FIG Forum is as set out on the attached paper.

**Decision:**

#### Appendix To Item 29.2

#### FIG FORUM – HKSAR TERMS OF REFERENCE

As proposed by the FIG Council, the HKIS has agreed to explore the formation of a HKSAR FIG Forum which shall be convened by the FIG existing member.

The overall aim of the Forum will be to provide a facilitating mechanism to enable individuals not being members of HKIS in HKSAR, such as members of HKIES, to become involved in the work of FIG.

More specifically the Forum will facilitate communication of the FIG Council and Commission work-plans to a wider audience of surveyors in HKSAR.

It is the intention that such model in the longer terms will develop the possibility of participation from a wider spectrum of surveyors in Hong Kong.

The first meeting of the Forum will take place before the end of 2002.

# Building SURVEYING Division

*Raymond CHAN, Chairman*

The letters we published here last month have created some noise and discussion within our building surveyors' circle. It is good to learn that our members really read our magazine. I want to clarify here that the publishing of the letters was a decision made by the BSD Council. There was not any preset viewpoint from the Council or the Editorial Board. You may have noticed that we have not made any "comment" on the letters. The whole exercise was to let members be aware of the views of other fellow members.

In fact, if you want to voice any other views or report anything, which may affect us, you may write to us. The BSD Council is more than happy to consider publishing them.

## Visit to Australia

Mr. Samson Wong and myself represented HKIS, BSD to visit Australia during the period from 28 March to 4 April 2002. The objective of the visit was as follows:

- 1) To visit the Building Surveying Institutions in Sydney, Australia and to brief them on the current development of the surveying profession in Hong Kong and the role played by HKIS in recent years upon the setting up of the HKSARG.
- 2) To visit major consultancy firms, government departments and public bodies which employ BS staff, and educational institutions which supply BS students, and to meet relevant officials to exchange views on building surveying, building control, building maintenance, facility management and heritage preservation work.
- 3) To explore areas for further professional development and technology exchange activities amongst Hong Kong and Australia.
- 4) To explore the possibility of forming a Pacific Association of Building Surveyors.

We met the following organisations or surveyors:

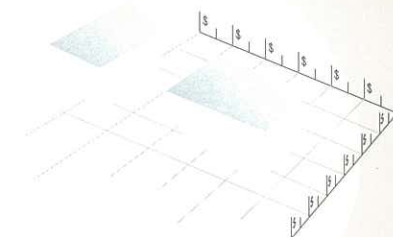
- 1) Australian Institute of Building Surveyors
- 2) RICS Oceania Branch
- 3) Australian Building Codes Board
- 4) Australian Greenhouse Office
- 5) University of Sydney
- 6) Some building surveyors practicing in Australia (RICS & HKIS members)



Visit to Australian Building Codes Board



Visit to RICS Oceania Branch



## GENERAL PRACTICE DIVISION

Alexander LAM, Chairman

This visit proved to be fruitful. We learnt that there are about 50 chartered building surveyors in Australia and there is one Building Surveying degree course being run in Australia. Most chartered building surveyors in Australia work on building survey for existing buildings, project management and building control. The Australian Institute of Building Surveyors (AIBS) has its members mainly working on building control. AIBS has about 2,500 members including students and affiliated members. There are currently four degree courses in Australia preparing students for AIBS membership.

At our invitation, their National President, Mr. Geoff Mitchell, will be visiting Hong Kong during the end of June 2002, after attending the International Building Control Conference in U.K. We are planning to invite him to give us a CPD talk on "The private certification system in Australia". We shall let you know once the arrangements have been confirmed.



Meeting with AIBS

### Meeting with Mr. Marco Wu, Deputy Director of Housing

Further to the meeting with Mr. Marco Wu in December 2001 (reported in the February issue of "Surveying"), we had another meeting with him and his staff on 29 April 2002. Seven BSD Council members attended the meeting. Matters concerning our profession were discussed in the meeting.

In the meeting, we expressed our concern on the format in which the Housing Department packaged the Property Services Contracts. The format of the package makes the property management companies (housing managers) become the leader and boss of the whole team. Building Surveyors are supposed to be "employed" by the property management companies to provide services in these contracts. In some situations, building surveyors may need to give their professional opinion contradicting with the interest of their "Boss". We expressed our view that it represents an unhealthy relationship. We suggested to review the relationship and let building surveying services be directly employed by the Housing Department. We also discussed ways to improve "partnering" between the Housing Department and consultants.

### Visit to Beijing

BSD Council is preparing for a visit to Beijing in June 2002. We plan to visit government departments, professional institutes and colleges. We hope that building surveyors of HKIS can establish some counterparts in the Mainland China in order to expand our job opportunity and professional development. **S**

### Beijing Visit

A delegation of 8 members led by President Hak Chan and Junior Vice President Tony Tse, visited The Ministry of Construction, Ministry of Land and Resources, China Institute of Real Estate Appraisers and China Real Estate Valuers Association on 13 May 2002. We landed smoothly in Beijing International Airport on the day before the meeting at around 10.50 pm. It was quite a long drive from the Airport to the Xi Yuan Hotel which is located at the north western part of the city. About halfway between one of the connecting flyovers, our coach came to a halt and evidenced a taxi lying horizontally upside down, blocking up at least 2 of the 3 lanes. The car body was damaged in such a state that an unfortunate insurance company would possibly have to compensate a "total loss", if the owner did not forget to renew the policy. It had already passed midnight when we reached the reception counter of the hotel.

At 9.30 am sharp, the delegation arrived at the meeting hall of the Ministry of Land and Resources to meet with Vice Minister Mr. Li Yuan (李元副部长), Ms Shu Ke Xin (束克欣副司长) and Mr. Cui Yan (崔岩副司长). The Vice Minister showed an interest in the HKIS and the General Practice surveying profession in the HKSAR. The meeting was scheduled for one hour but due to hectic discussions it ran over by 20 minutes. The idea of reciprocity was fully supported by the Vice Minister.



(From right to left) Cui Yan, Serena Lau, Alexander Lam, Shu Ke Xin, Vice Minister Li Yuan, President Hak Chan, Junior Vice President Tony Tse, Francis Lam, P. K. Ip and Andrew Chan

Instructions were delivered that the two institutes will hold seminars as well as training courses for the China Real Estate Valuers Association.

Immediately after the meeting with the Minister, we met with representatives from the China Real Estate Valuers Association including Mr. Liu Wen Jia (刘文甲会长), Mr. Xiang Hong Yi (向洪宜副会长), Ms Qin Hai Rong (秦海荣秘书长) and Mr. Kong Wei Dong (孔维东主任) at the same meeting hall for about an hour's discussion on closer cooperation and future reciprocity arrangement.

The main objective of this visit was to meet the Ministry of Construction. With the kind assistance from Ms Sun A Qing as well as Mr. Cai Wen Feng of the Liaison Office of the Central People's Government in the HKSAR, we met with Vice Minister Mr. Liu Zhi Feng (刘志峰副部长), Mr. Shen Jian Guo (沈建国外事司副司长) and Mr. Lu Ke Hua (陆克华房地产业司副司长). The meeting was not only constructive but also encouraging in that the reciprocity agreement between HKIS and CIREA had the blessing from Vice Minister Liu. We shall form a working group to liaise, discuss and agree on the mechanism of reciprocity.



President Liu Wen Jia (6th from left) and delegates



Alexander Lam, Junior Vice President Tony Tse, President Hak Chan, Vice Minister Liu Zhi Feng and Lu Ke Hua

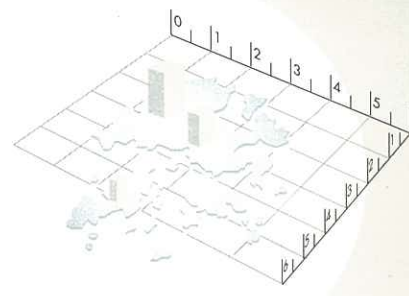


(From right to left) Chai Qiang, Sun A Qing, P. K. Ip, Francis Lam, Ku Ke Hua, Shen Jian Guo, President Hak Chan, Junior Vice President Tony Tse, Alexander Lam, Serena Lau and Andrew Chan

The delegation did not have any break during this trip. At 2.30 pm, representatives of CIREA met with us in their newly renovated premises. Most, if not all of our discussions focused on the subject of reciprocity as well as how tactfully we should play in the next meeting session with the Ministry of Construction.

### Valuation Firms List

Private valuation practitioners should keep the Institute updated with the records of GP and RPS members in your firm, if you do not intend to jeopardise your firm getting valuation instructions. If by any chance your company is not included in the List of GP Firms, please contact the Institute for an application form and return it to the Institute as soon as possible. **IS**



## LAND SURVEYING DIVISION

WONG Chung Hang, Chairman

### Systematic Boundary Survey for Old Schedule Lots

The Institute has written to the Chief Executive HKSAR proposing a systematic boundary survey of all the Old Schedule Lots (and alike) in the New Territories. The proposal is to upgrade the current graphical land boundary record to a high precision and numerically defined record, essential for quality land management, efficient land transaction and the future development of Hong Kong. The cost of the survey is about \$1.9 billion for a period of ten years. The Government can contract out the survey thereby creating about 750 employment openings at various levels.



The LSD Chairman, Mr. C. H. Wong, presenting a souvenir to Mr. Ian Wootten (left)

### Survey and Mapping Development in Hong Kong

It is very encouraging to know that the Report on Survey and Mapping Development in Hong Kong was one of the most popular publication prepared for the FIG 2002 International Congress in Washington, DC, USA on 19-26 April 2002. A total of 600 copies of the report were distributed to delegates attending the Congress. To keep LSD members abreast of the latest achievements in various aspects of land surveying in Hong Kong, the LSD Council has decided to give each and every LSD member a copy of the report. The report will also be distributed to relevant land surveying related organisations in Hong Kong and China as well as overseas.

### CPD Talk on Cadastral Surveying

LEUNG Kin-wah

It was our honour to have Mr. Ian Wootten, Managing Director of Wu Hill & Associates Ltd. deliver a talk on "Cadastral Survey in the New South Wales, Australia" on 18 April 2002 at the Hong Kong Convention and Exhibition Centre. Mr. Wootten has over 30 years' cadastral surveying experience in both Australia and

Hong Kong. In that evening, Mr. Wootten talked about the Torrens land registration system and the challenge of applying it to Hong Kong. About 70 members attended the seminar. The talk was very informative; it was particularly most interesting to know the details of the NSW survey identification certificate and the boundary marking on the tree trunks.

Mr. Wootten's talk was one of the first CPD series on the cadastral systems of various countries. The next CPD talk will be presented by Mr. Marvin M. Chau. He will talk about cadastral surveying under the Registry and Land Titles Systems in Ontario and its relevance to the system in Hong Kong. Members are encouraged to attend the seminar. Details are as follows:

- Speaker:** Mr. Marvin M. Chau, AHKIS, OLIP, OLS
- Title:** Cadastral Surveying in Ontario, Canada
- Date:** 25 June 2002 (Tuesday)
- Time:** 6:45 p.m. - 8:30 p.m.
- Venue:** Room 602 (Old Wing), HK Convention and Exhibition Centre, 1 Harbour Road, Wanchai, Hong Kong.

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- **CEM Diploma in Surveying\*** - Registration no: 250146(3)  
Both courses meet the academic requirements of the Hong Kong Institute of Surveyors and the Royal Institution of Chartered Surveyors, United Kingdom.
- **BSc in Quantity Surveying\*** (University of Reading)  
- Registration Pending. HKIS Accreditation pending.
- **BSc in Building Surveying**  
(This is a purely distance learning course with no regulated course activity or examination conducted in HK)

**For further information, please contact:**  
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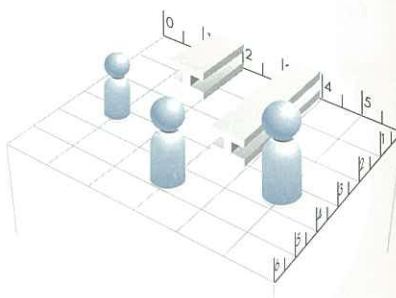
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## QUANTITY SURVEYING DIVISION

*Nelson CHENG, Chairman*

### Welcoming Dinner for Newly Qualified Members

The welcoming dinner for newly qualified members was held on 3 May 2002 at the World Trade Center Club. The dinner was attended by 30 newly qualified members and some assessors. A forum chaired by our council member Eric Cheng was held and senior QSD members working in various organisations such as contractors, developers, engineering consultants were invited to give a brief idea to new members as to how they work in these organisations.



*Our two MCs*



*Forum chaired by Eric Cheng (centre)*



*Newly qualified members with QSD council members and guests*

### CPD

The following CPD events have been conducted:

- 10 January** An Introduction to the Rules and Guidelines of Construction Mediation in Hong Kong  
*(Mr. Stephen D. Mau)*
- 22 February** Talk on Cyber-port *(Mr. Kenneth W. Nip)*
- 16 March** 介紹京津滬的工程造價管理及建築業發展及內地與香港工程造價諮詢行業發展概況與展望  
*(Mr. Yang Si-Zhong & 北京、上海、天津政府部門主管)*
- 19 & 26 April** E-Commerce & E-Project Management for Construction Professionals  
*(joint organized with HKPU)*
- 21 May** Visualize the home for the future  
*(Mr. Samuel Cheng)*
- 28 May** A Review of Partnering based on papers and reports from USA, UK, Australia and Hong Kong  
*(Mr. Philip Nunn & Mr. Brett Vincent)*

The following CPD events are to be conducted:

- June** Talk by a Real Estate Investment Fund Manager
- 17 August** Site Visit to IFC II
- To be confirmed** Use of Mediation (in Chinese)
- To be confirmed** Site Visit to Swire House Redevelopment
- To be confirmed** Talk on Insurance
- To be confirmed** Site Visit to the Legislative Council Building / another topic

### HKIS QSD Technical Seminars for CECA on 28-29 June 2002

The QSD Council members will lead a team of speakers to Shanghai on 28 and 29 June to deliver a technical seminar to 150 members of the CECA. The topics include HK Government procedure, cost control in public bodies in Hong Kong, cost control of a large infrastructure project, role play on claims assessment and settlement, insurance, risk management. The aim of the seminar is to introduce international practice to the Mainland QS. A series of technical seminars will be organised in future, and representatives from other countries of QS institutions will also be invited. ☐

## CHAN & TSU, SOLICITORS

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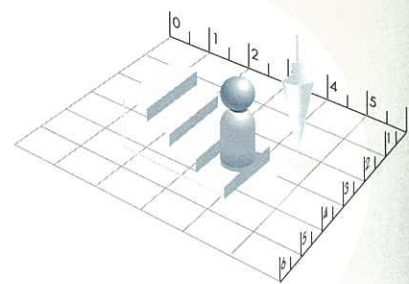
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## JUNIOR ORGANIZATION

### Dancing on the Cliff Edge

在險峰峻嶺上起舞

Jim YIP, Hon. Secretary

It is interesting to note down the views of Peter Woo, Trade Development Council Chairman, on Hong Kong's future, and the Australian surveyors on the real estate market.

Peter Woo's view on how Hong Kong should position itself in future:

- Hong Kong's advantages will remain and unlikely be challenged in the near future. We have the best location for the great market of Asia.
- Hong Kong will attract more overseas companies, evidenced by the increase in the number of regional headquarters and offices setting up in Hong Kong last year.
- Hong Kong, already home to 300,000 small and medium size enterprises (SMEs), should capitalise on its strength to attract more SMEs from abroad.
- Hong Kong has a potential to become a Mecca for millions of Chinese SMEs in future. Chinese companies can make use of Hong Kong's excellent facilities and services to help them export their goods to the international market.
- However, the size of their operations in Hong Kong will be slim, possibly not more than 10-20 staff.
- Large corporations will continue to trim down their workforce, moving their back-up office to our low-cost neighbours.
- Despite that, the number of jobs created by the new influx of SMEs will be far more than the job loss.
- Education of our workforce is very important, because we need new skills for future jobs.

According to a special edition of Australian Land Economic Review, a range of wider forces have started to impinge on the property professional moving into the next millennium. Amongst such wider forces of change, the next millennium will see:

- the illiquidity of property vanquished;
- the framework of the property market fundamentally challenged by demographic change;
- the transformation of work practises through the cyber-revolution;
- a totally new concept of the professional career;
- the subjugation of the property valuation discipline into the finance school;
- the metamorphosis of the nature of property services provision;
- the dominance of capital management over property market fundamentals;
- the ascendancy of China as the world's largest property market, property industry and property profession;
- the implementation of a multi-participant approach to the provision of property education for a disaggregated student body; and
- the empowerment of the individual with the ascendancy of lifestyle.

### What are the implications to young surveyors?

The real estate market will survive; property careers will only be more interesting, more often we will find ourselves working for a small company with a nimble and nifty management culture

than a large corporation or public sector. Job competition will only intensify; in future not only do we compete amongst ourselves, but also the increasing number of professionals from the Mainland China. We therefore need more professional knowledge and to learn new skills. Value-adding quality is the rule of game. Have we prepared ourselves?

### International Real Estate Finance and Investment Seminar Update



We have developed a website (<http://www.hkis.org.hk/joseminar>) for the seminar in which well-known speakers Professors Andrew Baum and David Hartzel will speak on a wide array of topics related to international real estate finance and investment.

To add more local flavour in our coming 2-day seminar on 31 August and 1 September, the committee is contemplating to invite some distinguished speakers. We have invited an investment banker specializing in financial engineering.

The organising committee also calls for sponsorship of the event. The corporate logo will be printed in our seminar backdrop banner and the front page of our course handout if a company sponsors HK\$1,500 to the event. For sponsorship details, please contact Jim Yip at [jimyiphk@yahoo.com](mailto:jimyiphk@yahoo.com)

The Government has a funding scheme for professional education. For those members who wish to seek financial assistance for the enrolment fees of our seminar, we advise you to visit this site: [http://www.smefund.tid.gov.hk/eng/eng\\_main.html](http://www.smefund.tid.gov.hk/eng/eng_main.html)

### Visit to the International Finance Center (IFC) Show Suite

About 50 of our members joined in a visit to the state-of-art show suite at IFC Tower 2 on 16 March. Mr. Johnson So, senior project manager of Sun Hung Kai Properties, shared with us the grant development concepts and some of the innovative designs in this landmark development.



Mr. Johnson So receives a souvenir from JO Vice-chairman, Mr. Sunny Chan

## QS APC Workshop Attended by Well over 300 Students

Over 300 QS students attended four intensive sessions on past APC paper reviews in April. Experienced APC assessors gave an in-depth talk on the background knowledge, skills and contents required in tackling the APC questions. Using 2001 papers as a case study, candidates' deficiencies in their answers were illustrated. Our students actively participated in the discussion at the end of each session. Special thanks to Sunny Chan, JO Vice-chairman whom initiated the program and QSD assessors Mr. K.C. Tang, Mr. Frank Yeung, Mr. Lawrence Chung, Mr. Evenlyn Kwok, Mr. Sam Cheng and Mr. Low Hon Wah.



## HKU Term Visit

Surveying graduates from the University of Hong Kong (HKU) can choose either one of the three divisions: BS, GP and QS for their careers. Fantastic, isn't it? We don't know how they do it (a convergence of surveying skills?), but we do know they have a problem in making their choice. How do each division measure up? How should one value his/her own character to make a career choice? How to build a professional career or put it simply, is there still an opportunity for a surveyor? How to make an inroad to the PRC job market?

All four JO office-bearers, Nathan Lee, Sunny Chan, Tony Wan and Jim Yip plus Ronald Cheung, Wong Kam Wah, Kenneth Kwok, Thomas Tse and TT Cheung, joined in the careers talk organised by the HKU Surveying Society on 18 April. We had a close and frank dialogue with some 40 students.

The event was well organised. JO committee members (most of us not HKU alumni) were particularly impressed with the HKU Surveying Society Committee's uniform (they look really smart) and their organising skills.



Nathan Lee receives a souvenir

## JO PQSL Series Open a Window of Opportunity for Young Surveyors

JO has run a very successful PQSL program every Saturday at the HKIS office. So far most of our guest speakers were very impressed with the enthusiastic response of our attendants. We now need more speakers to share their industry experience. Being our speaker you not only contribute your effort for the benefit of our young members, you also benefit too. You can enjoy the thrill of presenting your exciting project to some 30-40 young professionals, and being challenged, you can also build your personal record of teaching experience, an important stepping stone for your future career development. If you wish to offer a PQSL for us, please don't hesitate to contact our PQSL convener Justin Wong at [justinwhm@hotmail.com](mailto:justinwhm@hotmail.com).

Presentation material for some of our past PQSL events can be downloaded from our JO website (<http://devoted.to/hkisjo>).



JO Hon. Secretary, Jim Yip, speaking at a writing workshop



Derek Leung from City University of Hong Kong



Dr. Eddie Hui at a JO CPD on 10 May



Students enjoy a group discussion at a PQSL

### Schedule of 4 PQSLs in July

Date	Topic	Speaker
6 July	Arbitration of Valuation Disputes	Tony Leung, Chesterton Petty
13 July	Cross-examination Tango - How to handle a surveyor by a surveyor in the Lands Tribunal?	Simon Lui, Barrister-at-law
20 July	Land (Compulsory Sale for Redevelopment Ordinance) - Sword of Damocles? Case studies	Alan Cheung, Benson Lee and Victor Ng, Swire Properties
27 July	Building Demolition Practice in Hong Kong	Paul Cheng, contractor



Surveying Warriors

## JO Social Event

### Modern Rambos - War Games

April 28 was a memorable day for JO. A total of 18 young surveyors became war heroes in a brave mission to rescue the son of a property tycoon, whom was kidnapped and locked in a wooden hut in Siu Lam, Tuen Mun. The day saw intense fighting and few casualties were made. Thanks to the unlimited supply of pellets and stacked tyres as good cover, at sunset we successfully broke apart the enemy's defence line and freed the hostage. After hearing the happy father's promise of investing billions of dollars into the real estate market, we immediately changed our camouflaged clothing into suits, dumped the automatic rifles and returned to our promising property career. For the record: the pellets didn't hurt - even when being shot at headlong range.

JO website: <http://devoted.to/hkisjo>



The defiant tigers

## JO Dragon Boat Race Team Trains Their Paddling Skills in Stanley Bay

This year we will have two boats participating in the Tuen Ng Festival Stanley Race on 15 June. One additional team is made up of surveying students from three local universities.



A style to be for JO Annual Dinner

## JO Annual Dinner Organising Committee Scoring Goals

2002 is definitely a bumper year for JO. The JO Annual Dinner Organising Committee has decided to stage the wildest party in JO history towards November to celebrate the end of this fruitful year.

A wacky idea of a garden marquee with alfresco dining, lawn drinks and jazz entertainment has jumped into our minds.

Currently, we are working on three proposed themes with different choices of venues. We have to choose one - not an easy decision.

- 1) **Life's a Breeze:** at the former famous Repulse Bay Hotel, mesmerized by the beautiful setting surrounded by some of the most expensive properties in the world, and of course, the breathtaking ocean view. Nothing could be more blissful than that.
- 2) **The Raw Power:** at the rooftop of Hong Kong International Distribution Centre (HIDC), overlooking the Kwai Chung Container Terminal, the dynamo for Hong Kong's economy.
- 3) **The Virtual Catapult:** at the podium of Cyperport project phase I. Bricks and mortar become bits and bytes. With the dawn of new economy, is it an appetizing dish for surveyors?

Tell us what you want most and throw us some ideas. Or if you wish to join the organizing committee, please send an e-mail to: [tony.wan@ap.joneslanglasalle.com](mailto:tony.wan@ap.joneslanglasalle.com). 





## CONGRATULATIONS TO THE FOLLOWING WHO WERE ELECTED AS HKIS MEMBERS ON 16 MAY 2002

### Fellows (6)

#### GP Division

Tam Yam Pui, Ariel

#### QS Division

Lo Seung Chi, Stanley

Lo Yiu Cho

Tang Ping Fai

#### Transfer Division From GP To PD

Lau Tak, Francis

Seabrooke, William

### Associates (21)

#### BS Division

Chan Kwok Hung, Kenny

Fan Kin Kei

Hui Tin Yau

Lam Wan Ching

Leung Kin Wai

Ng Tsz Yan

Ping Tak Wai

Yuen Wing Sze

#### GP Division

Ho Chin Choi

Sin Kwai Lan, Sandy

Tse Ka Yiu, Byron

Wong Kam Wing

#### LS Division

Chong Pui Wah

Chung Chiu Tong

Lau Chi Kwong

Lee Chuan Teck

Lo Hoi Yin

#### QS Division

Chan Hau Hok

Ho Yuen

Ng Fung Yee, Emily

O'Brien, Kevin Michael

### Resignations (11)

Barry, Sheila

But Ying Wai

Chan Kwok Chu, Charles

Chu Man Yee, Maggie

Haynes, Simon Frederick

Lamont, Andrew Hewit

Lee Hiu Kei

So Ka Li, Carrie

Suen Kit Mui

Toomey, Dennis Patrick

Yim Ka Shing



## A BEAUTIFUL MIND

TT Cheung's palpable passion for the profession

| Sunny CHAN and Jim YIP



T. T. Cheung

Pauline Chiu, like the rest of some 28 young QS surveyors, was formally named as an associate member of HKIS in a diploma presentation ceremony on 17 March 2002. After countless handshakes, posing in several big group photos and the celebration dinner, she returned home. She didn't know there was someone more excited at her new achievement.

A greeting email was sent to these 28 newly-qualified surveyors at 1 a.m. next morning. It was written by TT Cheung, Hon. Treasurer of HKIS and former QS Division Chairman. "The tone of the mail was like from an old friend. He told us his experience of using different web mail accounts in the PRC," says Pauline. She was puzzled when at the dinner TT rushed from the stage after his speech and asked for everyone's email address.

In the same mail TT didn't stop short of asking them ideas for re-branding the quantity surveyor to better reflect their work, an issue which the QS Council is currently debating.

"Every new member to HKIS represents an asset to us. They are the pillars of our profession and we are counting on them. It is important to forge a strong tie with our young members right from the start. The diploma presentation ceremony must not be seen as the end of our relationship, but instead, the dawn of a new chapter," TT said in his typical tone of confidence.

He believes frequent dialogue with his new acquaintances is a way to win their support. The next day after his return from the annual conference of the Pacific Association of Quantity Surveyors (PAQS) in Melbourne, for which he is the current chairman, he wrote them another email. He told them how excited he was at the conference and hoped to meet them soon and share some of the interesting insights from the other delegates regarding the future role of QS in the region.

"Let's make HKIS a stronger professional body in the future!" he wrote, appealing for their votes to back the HKIS constitutional reform proposal in the imminent EGM.

Corporate membership of HKIS has grown very fast in the past decade. However, the number of devotees to the Institute's affairs does not increase proportionally. "HKIS is blessed with a powerful engine for growth. Of some 3,000 corporate members, about 1,500-2,000 of them are in the 30-40 age group. They are resourceful and ambitious professionals. If we are all working together, I absolutely believe our profession will have a more rosy future," he said.

But how to motivate everyone to see the light of it and unleash the synergy among all members? It has remained an elusive goal for each year's General Council to attract more active participation from young members. To break the deadlock, one of TT's initiatives is to get together a group of enthusiastic young members and organize informal lunch meetings with some senior members like Hon. C.Y. Leung, Hon. P.C. Lau and Marco Wu being invited to share their successful working experience. "These targeted young members are our ambassadors. They will help us to bridge across the communication gap between the divisions and levels of our members," he said.

TT currently works for a listed company's subsidiary, once one of the largest fitting-out contractors in Hong Kong. Using his expertise in contract and financial management and with the assistance from a number of specialist lawyers, he helps the company to recover a substantial sum of outstanding payments that had piled up before he joined the company as a Managing Director in 1999.

Apart from his heavy workload, he spends a lot of the time and energy in assisting the Institute's development and pioneering the expansion of the surveying profession outside Hong Kong. In recent years, we have seen him taking up key posts in the Pacific Association of Quantity Surveyors (PAQS) and the

International Cost Engineering Council (ICEC), for which he is currently the Chairman and Director of the Asia Region respectively.

But throughout the years he still remains dedicated to educational concerns. For the past 12 years he has not missed the annual school visits organized by JO.

In late April, TT was a guest speaker in a career talk to 40 Year-One surveying students from the University of Hong Kong. He used an interesting analogy to illustrate the functions of surveyors in the society: "Quantity surveyor is an accountant in construction; building surveyor a doctor in building whereas a GP surveyor a merchant in property."

He is also the external examiner for the surveying courses in the University of Hong Kong (HKU) and the Hong Kong Polytechnic University (Polyu). "There is a gap in expectation on a graduate's skills set between the university and the industry. To ensure a high standard of global competitiveness amongst our graduates, the course curriculum has changed quite significantly in the past few years, focused more on management and economic subjects and less on practical skill training. As a result this creates a misconception that today's graduates could not even do measurement, which is one of the most basic skills for a quantity surveyor. As external examiner, I will be more neutral to give advice to the Institute, bridging the interests between the industry and the universities," says TT.

TT seems to have a talent in doing several things at the same time and managing them all superbly well. During his undergraduate study in HKU, he was the university's squash and swimming team member, school senator as well as the student hall leader. He could count the days he spent in the lecture hall each year but lost count of the awards he won in various sports competitions. Yet, he received his surveying degree with First Class Honours.

Ever since he started his QS career in Levett and Bailey (L&B) in 1985, TT has been actively involved in the Institute's affairs. He was the chairman of Junior Organisation in 1990-91, and under his leadership JO for the first time took part in the dragon boat race and organised an auction sale for charity. They also held a school debate between HKU and PolyU, with Barnabas Chung, C.Y. Leung and M.Y. Wan as the judging panel.

During that time, he usually went back to office after the JO functions and continued working on the documents for the following day's tender. "But it is fun in JO and you can build a large network with many people in the industry," he said. All JO Councils in the past 10 years appreciate his initiatives in forging new ideas for the JO.

L&B is one of the biggest QS firms in Hong Kong. It is difficult for a professional-graded staff to be considered for promotion to Associate level without delivering an outstanding service for the practice. TT was named Associate in 1990, five years after joining, but strictly speaking, he achieved that in three and a half years' time. One year after joining L&B, he left for UK pursuing a master degree in construction economics and management on a scholarship. "I didn't completely cut my ties with L&B, I was only second to its London associate office, though working on a part-time basis. I rejoined the company after leaving for one and a half years". He was proud of his record of self-financing his study with the income from the job. Earning £2,000 a month, he was in fact a very well-off student in those days and traveled a lot on his own to broaden his vision.

With the Commonwealth Scholarship, TT could choose Oxford University or the Bartlett School, University College of London (UCL). He opted for the latter one. The Bartlett School was one of the UK's earliest and most respected institutes in architecture, economics and management. He loved the school's intellectual-challenging study environment and the course which offered the most advanced practical knowledge in project management. The Oxford's degree was more geared towards academic research and developing a future career in the academics, which according to him, TT was not committed to at that time.

The study in UCL was very tough, especially for the tutorial section. "The experience was like going into a wrestling competition and your opponent was the giant professor and you were on a one-to-one fight. You have to make yourself well-prepared before each tutorial. I was always severely bruised at the beginning of the course," he recalls. "But I usually knocked on the door of the same professor to repeat the challenge again the next day after digesting what he had said and read more books for the whole night. It was really satisfying even though I was completely exhausted after the deadly fight."

These days he works on a tight schedule and sleeps only five hours a day. It is a very common experience for other committee members to receive email from him at 2.30 a.m. He insists getting up every morning at 7.30 a.m. to have breakfast together with his wife and two children and to send them off to work and school.

Where does he find all these energies? "Family support is very important and I am lucky to have an understanding partner," he says. Contrary to what most believes, he says the probability for him to dine out in a week averages at only 20%. One reason for it is that every Wednesday he participates in squash league, which he has done so for the past nineteen years, and has a meal with his team mates afterwards.

"As a project manager, you need to have good discipline and time management skill," he says. He develops a habit to respond to every email or fax within five minutes. "Imagine, if everyone in the circulation list delayed by a day, the whole thing would run out of control, and there would be no efficiency."

"To succeed, you need to strive the best of your ability and demand a higher standard of performance." In the office he is known for his disdain for mistakes in letters drafted by his colleagues. "That clearly shows your weakness in working attitude and clients will relate our work of inferior quality," he explained. "I can be patient when you don't know, but not when you should have known better." He adds: "As a manager I know everyone's ability and I will not demand something beyond their limits."

"A successful manager also needs to have a good memory," he said. He finds this is the most common trait in every great leader in history. He recalls an incident many years ago when he was a junior QS in L&B. He went with his boss and other 18 people to a cocktail party where they were first introduced to David C. Lee. He was impressed that Mr. Lee soon called everyone by his or her first name.

TT himself obviously has a brain with a storage capacity of a hard-drive. He can name all the surveyors and their graduation years from HKU even 7 years senior to him. Even freakier, he remembers the names of the past JO chairmen since 1990 and who are who in the past QS divisional councils.

According to TT, 3,000 surveyors are simply not enough to serve the needs of Hong Kong's property market, not to mention the PRC market where there is an acute shortage for construction professionals and contract consultants. His bullish remark is in stark contrast to the gloomy sentiments currently pervading in the industry. "I remember my professor Donald Bishop in UCL once said: 'Everyday a man comes out from a hole he dug for himself yesterday.' I choose to think positively for our future."

TT has over 10 years solid experience in the PRC property development market and has witnessed the evolution of cost management in the sector. "With China's abundant and low-cost labor supply, I see a great deal of opportunities in future for them to bid for foreign construction and civil engineering projects. But they need to develop a stronger skill in international contract management, and we, Hong Kong surveyors can definitely play a key part in that," he said.

Should he retire early, he contemplates, he would do a Ph.D. research paper on the development of Chinese dispute resolution system. Once again, he displays his usual quality of confidence: "With my profound experience in this market, I believe most of the famous universities including Stanford or Tsing Hua University will invite me as visiting scholar by that time."

Like his old friend Eric Chung, Managing Director of Paul Y. -ITC Construction, TT shares a strong interest in Chinese medicine. "He is giving people a free diagnosis service, but I am more interested to become a dispenser in Chinese medicine," he smiles.

Last Sunday, he took his family to visit the children patients of the Duchess of Kent Children's Hospital in Sandy Bay. Thanks to a HK\$80mn renovation work last year, the hospital has a shiny new look. TT, the chairman of the Hospital Building Committee and mastermind of the renovation, shares the joy of this successful project. Little known to most, TT has served in the board of the Society for the Relief of the Disabled Children since 1988.

On commitment to his profession and care for the society, we see a beautiful mind behind! **S**

*This is the last interview in Surveyors in Action.*

*The author would like to thank all those members interviewed for their support and contribution.*



## SELLING A BANKRUPT CONTRACTOR'S PLANT

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



In common with many forms of contract, and in particular the ICE Forms of Contract upon which it is based, the Government of Hong Kong Conditions of Contract include a clause (GCC Clause 71) that transfers to the employer ownership of the contractor's plant when it is brought on to the site, and gives the engineer power to expressly prohibit its removal.

This is not just to protect progress and continuity of works, but more importantly is designed to provide a valuable safeguard for the employer in the event that the employment of the contractor is terminated due to insolvency.

In such situations, GCC Clause 81 provides that after the termination of the contractor's employment

**".....the Employer or such other contractor may use for such completion so much of the Constructional Plant, temporary buildings and materials which become the property of the Employer under Clauses 71 and 72 as the Employer may think proper and the Employer may at any time sell any of the said Constructional Plant, temporary buildings and unused materials and apply the proceeds of sale in or towards the satisfaction of any sum due or which may become due to the Employer from the Contractor under the Contract."**

The employer therefore not only has the use of the contractor's plant to finish the works, but can use the plant as a source of funding to make up any loss incurred by the employer as a result of the contractor's insolvency.

These provisions are clear, sensible and well understood. However, as with many such matters the courts (and in this case

no lesser court than the House of Lords) have recently taken a different view in the case of **Smith (Administrator of Cosslett (Contractors)) Ltd -v- Bridgend County Borough Council** [2001] UKHL 58.

The case arose from a contract for rehabilitation work on an area of 141 hectares of land in South Wales, which had been disfigured by years of coal mining and in particular by derelict coal dumps, which remained on the land after the coal mining had finished. As part of the rehabilitation work, Cosslett was required to separate usable coal from the shale in the derelict dumps through a coal washing plant, and to this aim two large coal-washing plant were brought onto site. Purchase of the equipment was financed by an advance of £1.8m made by the employer to the contractor. The contract then provided for the repayment of that advance by way of deduction from the sums, which became payable over the anticipated four year term of the contract.

The coal washing equipment fell within the meaning of plant as referred to in ICE (5th Edition) Clause 51, which is identical to GCC Clause 71 described above, and therefore became the property of the employer upon being brought to the site.

The works progressed for about two years but it became clear that selling the coal recovered from the site, via the coal washing equipment, was not proving to be as profitable as Cosslett had expected. As a result Cosslett got into financial difficulties and abandoned the site and subsequently went into administration.

The council then entered into a contract with another company, Burrows Brothers, to complete the work, using Cosslett's coal

washing plant. Upon completion the employer then argued that in accordance with ICE Clause 63 (again almost identical to GCC Clause 81 detailed above) it was entitled to sell the plant and apply the proceeds towards any sums due to it from Cosslett.

The contractor's administrator disagreed. He argued that the combined effect of Clauses 53 and 63 was to create an equitable charge in favour of the County Council. The administrator further argued that this charge was a 'floating charge' rather than a 'fixed charge' and as such had to be registered under s.395 of the Companies Act to be effective. Since the charge had not been registered, it was therefore void. It should be noted here that the Hong Kong Companies Ordinance Cap. 32 contain similar provisions.

The main issue before the court was therefore whether the effects of Clause 53 and 63 were to create a fixed charge or a floating charge over the plant. The distinction was vital because whilst a fixed charge does not require registration a floating charge must be registered.

In the first instance, the court disagreed with the administrator. The judge considered that the charge was a fixed charge because Clause 53 provided that the plant could not be removed from site at Cosslett's will, and since Cosslett was not free to use the plant as it saw fit, this charge could not be a floating charge. Accordingly, as a fixed charge required no registration the employer was therefore entitled to the proceeds of the sale of the coal washing plant.

The administrator appealed to the Court of Appeal and some four years later the saga moved on to the House of Lords.



The decisions from these two senior courts were that the court at first instance was incorrect in its decision. The charge was a floating charge and as it was not registered the employer was not entitled to the proceeds of the sale of the plant. In reaching this decision the court felt the important point was that the power to refuse consent to the removal of the plant, which the earlier judge had treated as vested in the employer, was actually conferred upon the engineer. This suggested that the discretion was to be exercised independently on operational grounds and not as a method of enforcing the employer's security for the payment of money. This negated the criteria for the charge being a fixed charge.

This case is a very important one for employers, both in the UK and in Hong Kong, using similar conditions of contract. If they wish to protect their rights to use and sell plant brought on to the site by a contractor, who subsequently becomes insolvent, then they need to register a floating charge over them. Whether they will take the time and trouble to do so is questionable, but the result of a failure to register the charge is clear to see.

The other point to note from this case is that sometimes the words in a contract, no matter how clear, will be disregarded by the courts, and this seems particularly so where they may be contrary to statutory provisions relating to insolvency. ■



# VALUATION OF DISTURBANCE CAUSED BY VARIATIONS

Stephen PARKER, Brian E. Rawling & Associates



During construction of a building project, it is commonplace for contractors to have suffered, or allege that they have suffered, disturbance to the regular progress of the works caused by events which are an employer's liability.

Variations are probably the most common cause of delay and disturbance, thereby leading contractors to make applications for additional payment. A variation is something, which a contractor is ordered to do and which is not shown upon the contract drawings, described by or referred to in the contract specification or included in the contract price. A variation can be a change or extra work.

It follows that a contractor is entitled to additional payment if the work he is ordered to carry out as a variation is more expensive to construct than the pre-varied work, is not shown on the contract drawings, or described in the contract specification and was not included in the contract price. If a variation causes the contractor to increase key resources, or to retain key resources on site for longer than otherwise needed, then the contractor is entitled to be recompensed for these effects. A contractor's entitlements to additional recompense for variations are enshrined in the law of many jurisdictions, including Hong Kong.

Under the Agreement & Schedule of Conditions of Building Contract [published by an amalgam of the HKIA, HKIS and the Society of Builders, Hong Kong] (hereinafter referred to as the HKIA Conditions), variations ordered by the Architect shall be measured and valued by the Quantity Surveyor in accordance with Clause 11(4). Further, if the Architect is of the opinion that the Main Contractor has been involved in direct loss and/

or expense for which he would not be reimbursed by a payment in respect of the Quantity Surveyor's valuation carried out under Clause 11(4), and, provided that the Main Contractor has complied with the notice provisions, then the Main Contractor is entitled, under Clause 11(6), to reimbursement of direct loss and/or expense caused by the variation.

Therefore, the procedure is that, firstly, the Quantity Surveyor makes a valuation under Clause 11(4); i.e. such valuation should take into account all of the provisions in Clause 11(4) including what is often called re-rating, star rates and adjustment of preliminaries items; before, secondly, any consideration is given to direct loss and/or expense under Clause 11(6).

The limitation placed on the Main Contractor's entitlements under Clause 11(6) is that the loss and/or expense must be 'direct', i.e. that the loss and/or expense is compensation to cover damages that flow in the usual course of carrying out the type of work from which the breach was committed [the first limb of *Hadley v Baxendale*]. Other damages can be said to be too remote. For this reason, the courts applied a limit to losses recoverable as damages because, if damages "*were relentlessly pursued it would lead to the party in default having to pay "for all loss de facto resulting from a particular breach however improbable, however unpredictable"* [D. Keating on Building Contracts, Sixth Edition - page 201].

This article considers the application of Clauses 11(4) and 11(6) of the HKIA Conditions including the pricing of knock-on effects and the assessment of claims for additional payments caused by variations. It also recommends how an employer can introduce controls which will, at least, give an early warning of potential additional costs arising from variations.

## Clause 11(4) of the HKIA Conditions

Clause 11(4) sets out five basic rules for valuing variations, which are quoted as follows: -

- (a) *The prices in the Contract Bills shall determine the valuation of work of similar character executed under similar conditions as work priced therein;*
- (b) *The said prices, where work is not of a similar character or executed under similar conditions as aforesaid, shall be the basis of prices for the same so far as may be reasonable, failing which a fair valuation thereof shall be made;*
- (c) *Where work cannot properly be measured and valued the Main Contractor shall be allowed daywork rates:*  
  
The rest of this subclause is not quoted, as it is irrelevant to this article.
- (d) *The prices in the Contract Bills shall determine the valuation of items omitted; provided that if omissions substantially vary the conditions under which any remaining items of work are carried out the prices for such remaining items shall be valued under rule (b) of this clause.*
- (e) *If required by the Architect the Main Contractor shall within fourteen days of the Architect's written request submit a detailed estimate of the value of any variation.*

In accordance with Clause 9 of the General Principles of the Hong Kong Standard Method of Measurement for Building Works [SMM], "*the prices in the Contract Bills*" are to include establishment costs, overheads and profit. In addition, the preliminaries bill contains items that tenderers usually price for fulfilling their obligations under the Contract as required at the time of tender. Such items include time related recurrent overheads and fixed overheads usually associated with the contractor's site establishment resources.

Therefore, "*the prices in the Contract Bills*" are not only the "*prices*" for physical elements of the work but also allow for time related / recurrent expenses priced by the contractor in his tender. Such "*prices*" include for the management and supervision of the contract, both on and off the site, for the duration of the project. They also include for other time related / recurrent site resources such as plant, electricity, water, routine cleaning, safety administration, etc.

Where a contractor's time on site is prolonged due to the execution of varied work, it follows that those elements of the "*prices included in the Contract Bills*" in respect of time related / recurrent overheads, whether allowed for in the preliminaries bill, or elsewhere in the Contract Bills, will become inadequate to provide sufficient recompense to cover the period of prolongation. Therefore, by virtue of Clause 11(4) of the HKIA Conditions, "*the prices in the Contract Bills*" should initially be used for valuing not only the physical work which is the subject of a variation but also the knock-on effects of the variation, e.g. prolongation. This means that the Quantity Surveyor should, when preparing a valuation under Clause 11(4), not only measure and value physical works but also provide new preliminary items to reflect the knock-on effects and value such items at, or pro-rata, the prices in the preliminaries bill. In the event that the preliminaries bill contain no suitable items then the new preliminary items can be priced on the basis of a fair valuation.

The contractor is entitled to profit on the valuation of variations under Clause 11(4) so that also has to be included by the Quantity Surveyor when making a valuation.

Valuing the extended duration for a time related preliminaries item using a pro-rata analysis of "*the prices in the Contract Bills*" can deal not only with the valuation of knock-on effects but also maintain a contractor's profit allowance on a pro-rata basis to the allowances which were originally made in the tender.

Variations often cause no delay in the overall completion of the project but, sometimes, certain resources priced in the preliminaries bill are required to be kept on site for longer, or in greater numbers, to carry out varied work; e.g. pumps for dewatering an excavation for a basement. In such circumstances, "*the prices in the Contract Bills*" for such extended commitments should be adjusted when preparing the valuation of a variation.

The valuation of time related recurrent resources or overheads, i.e. the adjustment of time related prices where the whole works, or a part thereof, is prolonged, or the adjustment of prices for increased resources, or revised methods of working, can all be done under the provisions of Clause 11(4) if a variation caused the circumstance which warranted such adjustments. Clause 11(6) should only be relied upon if such adjustments do not recompense a contractor for all of its expenses caused by the variation.

## Clause 11(6) of the HKIA Conditions

Clause 11(6) of the HKIA Conditions provides as follows: -

*“(6) If upon written application being made to him by the Main Contractor, the Architect is of the opinion that a variation or the execution by the Main Contractor of the work for which a provisional sum is included in the Contract Bills (other than work for which a tender made under clause 27 (g) of these Conditions has been accepted) has involved the Main Contractor in direct loss and/or expense for which he would not be reimbursed by payment in respect of a valuation made in accordance with the rules contained in sub-clause (4) of this Condition and if the said application is made within a reasonable time of the loss and expense having been incurred, then the Architect shall either himself ascertain or instruct the Quantity Surveyor to ascertain the amount of such loss and expense.....”*

Should a valuation under Clause 11(4), including the aforementioned adjustments of the “prices in the Contract Bills”, not fully recompense a contractor for the direct loss and/or expense incurred, e.g. the additional expense incurred by a contractor in providing time related recurrent overheads for a prolonged period, the contractor is entitled to have the under-recovered direct loss and/or expense reimbursed pursuant to Clause 11(6).

Direct loss and/or expense under Clause 11(6) should be assessed in a similar manner to claims for damages at law. It requires a thorough understanding of the contractor’s actual expenditure and recompense through a valuation under Clause 11(4). The contractor’s application for additional payment often includes the monthly expense of on-site staff, accommodation, utilities, transport, attendant labour and other recurrent resources and expenses plus any off-site overhead costs, which are directly attributable to the variation. The monthly expense of such recurrent overheads over the period in which the prolongation occurred could be represented as a daily rate to be applied to the period of prolongation caused by each variation.

Multiplying the daily recurrent overhead expense by the number of days delay calculates the total expense for the period of delay / prolongation caused by each variation. The contractor is entitled to receive the difference between the total recurrent overhead expense and the amount previously reimbursed by way of a valuation carried out in accordance with Clause 11(4). This should be done for each variation where the effects thereof can be identified separately.

Should a valuation based upon “the prices in the Contract Bills” carried out pursuant to Clause 11(4) exceed the additional expense incurred on recurrent overheads for the prolonged period, the contractor has no claim for direct loss and/or expense for this variation but is entitled to the benefit of such valuation based upon “the prices in the Contract Bills”.

It follows, therefore, that the contractor’s *minimum* entitlement in respect of additional recurrent overhead expense incurred by reason of delay resulting from a variation, is recovery of the direct loss and/or expense, which the contractor incurred.

From first impressions it would appear that Clause 11(6) is heavily weighted in favour of a contractor. However, an employer receives the benefit of the changes whilst the contractor recovers his cost, a contribution to overheads and makes a profit. This is an equitable arrangement.

### An Example

Take a typical development in Hong Kong comprising a basement and podium with a tower built independently above. The critical path shown on the master programme is through the construction of the tower. Construction of the basement and podium are non-critical to the completion of the Works.

The architect issued a variation order which: -

- (i) varied the design of the basement thereby causing delay to completion of the basement, podium and lift pits;
- (ii) caused delay to the installation of lifts in the tower but did not delay completion of the tower.

The contractor had previously placed an order for the lifts for the tower, with a lead in period, which, as a result of the instruction delayed lift pit construction, required storage of the lifts, by the supplier, before delivery to site.

The contractor issued a written notification under Clause 11(6), and submitted an interim assessment valued as follows: -

- (a) under Clause 11(4) - the value of the variation ordering changes to the basement design - measured and valued at prices in the Contract Bills, or re-rates or star rates as appropriate;
- (b) under Clause 11(4) - adjustment of time related items for basement works priced in the preliminaries bill, and elsewhere in the Contract Bills, to provide a pro-rata assessment for prolonged recurrent overheads;
- (c) under Clause 11(6) - the direct loss and/or expense caused

by the basement delay calculated as damages as these expenses were in excess of the valuation of recurrent overheads under Clause 11(4); and

- (d) under Clause 11(6) - the expense incurred by the lift supplier for storage of the lifts.

The delay to completion of the basement and podium and the knock-on effect of storage by the lift supplier as the lifts could not be installed as intended because of the prolonged construction of the lift pits, clearly flowed from the variation order issued by the architect. Therefore, the contractor was entitled to a valuation of the knock-on effects and to recover direct loss and/or expense. The interim assessment listed in (a) to (d) above would appear to be valid and correctly calculated under the provisions of Clauses 11(4) and 11(6) of the HKIA Conditions.

### Incorrectly Priced Items

Where a contractor has under-priced an item of work in the Contract Bills which is subject to a variation which increases the quantity of the work to be carried out at the price which is under-priced, the contractor is not entitled to revisit and rectify the under-pricing under Clause 11(6).

In the case of *Henry Boot Construction Limited v Alstrom Combined Cycles Limited*, it was established that where the work covered by a variation order was of similar character and/or executed under similar conditions to the work priced in the Contract Bills or, where the differences were relatively small, the certifier was obliged to use the prices in the Contract Bills as the basis for his valuation, making adjustments as may be necessary for the differences.

Therefore, contractors are not entitled to claim additional payment resulting from the under-pricing simply because the work which was under-priced becomes the subject of a variation.

### Cause and Effect

Although a contractor has an automatic entitlement to a valuation of knock-on effects under Clause 11(4) and to reimbursement of direct loss and/or expense under Clause 11(6), the contractor’s entitlement is subject to evidence of cause and effect i.e. the causal nexus between an event and the effects thereof.

An employer will not be liable for a contractor’s claims under either Clause 11(4) or 11(6) if the employer’s consultants are not satisfied that there is a causal nexus. Although neither Clause 11(4) or 11(6) of the HKIA Conditions require a contractor

to submit explanatory particulars, it is standard practice for contractors to make such submissions to assist the consultants to fulfill their duties regarding valuation and ascertainment.

In a complex building project, knock-on effects, programme delay and cost overrun cannot always be easily connected to a single causative event. This is where, without explanatory particulars from a contractor, the consultants’ task become almost impossible to perform. In some circumstances, the entanglement caused by the effects of many events may mean that a contractor can only proceed with a global claim raised under Clause 11(6). Whilst global claims are to be discouraged, sometimes the circumstances are such that the effects of many variations just cannot be disentangled and cannot be priced separately.

### The Interests of the Employer

Having considered the rights of a contractor to a valuation under Clause 11(4) and additional payment under Clause 11(6), the drafters of contracts should consider what protection could be introduced to safeguard an employer’s interests.

An employer has an experienced consultant in the Quantity Surveyor to measure and value variations under Clause 11(4) and this, in itself, is protection for the employer. However, modern business pressures mean that employers need to know forecast outturns at all stages of a project. In general, a contractor would be able to operate Clause 11(6) without much consideration for the timing of his written applications to the architect or an employer’s financial concerns. This is not acceptable to most employers who require early notice when a contractor encounters circumstances for which they are entitled to additional payment.

Two ways in which an employer may protect his interests are as follows:-

- (i) to specify conditions precedent related to the issue of a notice of claim and the provision of particulars; and
- (ii) to require to the contractor to keep and agree comprehensive contemporary of records.

### Conditions Precedent

The current HKIA Conditions do not contain conditions precedent controlling the contractual procedures concerning the contractor’s right to pursue additional payment under Clause 11(6). Effectively the employer’s position is unprotected.

All that is required of a contractor to successfully operate the present Clause 11(6) is a written application, issued *within a reasonable time*, and the agreement of the architect that the contractor had been involved in direct loss and/or expense.

The wording '*within reasonable time*' does not reflect a fixed number of days within which a written application should be made. It is suggested that the period for giving a valid notice is open to interpretation and, should arguments ensue as to what that period should be, a position of time bar would be difficult to establish.

Further, the contractor's written application is to be given after the direct loss and/or expense was incurred thereby offering no chance for the employer to mitigate the cost of the variation.

It can also be argued that a notice under Clause 11(6) need not be issued until the Quantity Surveyor has performed the valuation under Clause 11(4) as, until that date, the contractor will not know what it is to be paid and cannot, therefore, know if there will be expenditure not reimbursed under Clause 11(4). This would mean that the contractor would not need to issue a notice until presented with the bills of variations. This would be wholly unsatisfactory to an employer who requires knowing the fixed financial outturn at the earliest date.

Under the Swire Properties Ltd. Standard Form of Contract, which adopts a similar format to the HKIA Conditions, consideration is given to: -

- (i) conditions precedent; and
- (ii) advance warning of loss and/or expense that a contractor may incur at some time in the future.

Clause 11(7) of the Swire Standard Form of Contract provides as follows: -

- (7) *Provided that as conditions precedent to his right to pursue any application or receive any payment pursuant to sub-clause (6) the Main Contractor shall within twenty eight (28) days after the commencement of the circumstances alleged to give rise to the Direct Loss and/or Expense or of the date on which such commencement can reasonably be anticipated (whichever is earlier) submit to the Architect written notice of such Direct Loss and/or Expense having been incurred or that the incurring of such Direct Loss and/or Expense is anticipated in the future. The Main Contractor*

*shall include in the said written notice such details of the said circumstances and of the Direct Loss and/or Expense arising or anticipated to arise from them as are then reasonably ascertainable and/or foreseeable and shall thereafter keep such records and submit such further information in connection with the said circumstances and Direct Loss and/or Expense as the Architect shall reasonably require.*

It is suggested that a similar clause should be included in the next revision to the HKIA Conditions in order to protect an employer's position under Clause 11(6).

### Record Keeping

Unlike the loss and expense provisions in other contracts, Clause 11(6) of the HKIA Conditions does not require the contractor to maintain and agree records of his expenditure in order to calculate the amount of additional payment it is entitled to receive.

It is suggested that the introduction of this requirement would be another way in which to protect an employer's interests. Swire Properties usually deal with this in Section 13 of Bill No.1 Preliminaries.


### Conclusions

In its current form, Clauses 11(4) and 11(6) of the HKIA Conditions provide contractors with almost unlimited entitlements to the valuation of knock-on effects and reimbursement of direct loss and/or expense caused by variations.

Whilst it is obvious that a contractor will require payment for additional physical work which it is ordered to carry out, the valuation of knock-on effects under Clause 11(4) and reimbursement of direct loss and/or expense under Clause 11(6) is not as obvious as less tangible issues are involved.

It is suggested that in order to maintain the rights of the contractor whilst, at the same time, protecting the interests of an employer, consideration should be given to: -

- (i) the introduction of conditions precedent to control the process; and
- (ii) a requirement for contractors to keep and agree contemporary of records.

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

## 中國工程造價諮詢業的發展與展望

中國建設工程造價管理協會理事長 楊思忠

The following was a speech given by Mr. Yang Si-zhong on 15 March 2002 at a dinner held in the World Trade Centre Club, where Mr. Yang was presented with a HKIS Honorary Fellow Diploma. His speech is in Chinese only.



各位女士、各位先生：

首先感謝授予我為香港測量師學會資深榮譽會員。這個榮譽是中國建設工程造價管理協會和香港測量師學會十多年來在促進內地與香港在工程造價領域進行交流合作所取得的成就的肯定。還感謝香港測量師學會，今天為我安排這次活動，使我有機會與在座的各位就中國工程造價諮詢業的發展及大家關心的問題進行交流和討論。

按照中國建設工程造價管理協會與香港測量師學會的交流合作計劃，此次我們組織了代表團到港進行訪問，代表團成員 17 人，其中有北京、上海、天津等地區的代表，他們也將要向各位介紹本地區工程造價管理的情況。

過去的一年是鼓舞人心、振奮人心的一年，我國成功地加入了世貿組織，取得了 2008 年奧運會舉辦權，在世界經濟增長減緩的情況下，我國經濟增長了 7.3%，仍然保持較快的發展勢頭。在黨中央和國務院的正確領導下，一年來，我們認真貫徹擴大國內需求的方針，安排好國債投資和管理，繼續加強農業的基礎地位，積極發展高技術產業，推進經濟結構戰略性調整，整頓和規範市場經濟秩序，推進西部開發戰略的實施，所有這些成就，是有目共睹的。

在全國大好形勢帶動下，中國工程造價諮詢業也取得了可喜的成績。如對外交流方面，自 90 年代中期以來，中國建設工程造價管理協會與香港測量師學會一直保持著密切的聯繫和交流，特別是香港回歸祖國以後，雙方的交流與合作有了更深層的發展，也由此加強了內地與香港工程造價從業人員的相互瞭解。2001 年我們共同成功的舉辦了

“2001 年北京國際工程造價研討會”，這種合作在國際國內都產生了一定的影響。為了使在座的各位對中國工程造價諮詢業的現狀和今後的發展有進一步的瞭解，我非常高興利用這次機會向諸位作一個簡要的介紹：

### 一、工程造價諮詢業的發展歷程

正如大家所瞭解的，中國正在逐步建立社會主義市場經濟體制。在過去相當長的計劃經濟體制時期，工程造價管理是依據計劃經濟的原則進行管理的。政府是建設工程的投資者，專案的建設和管理也是由政府承擔，工程造價的確定和控制主要依靠政府制定的定額和標準來執行。因此“工程造價管理”更多意義上是指政府對工程造價管理。自 90 年代初國家確定建立社會主義市場經濟體制的目標後，投資主體逐步實行了多元化，建設體制中推行了招標投標制、合同管理制、工程項目監理制。與此同時，工程造價計價依據也有了相應的變化，改變過去定額多年不變的情況，根據市場變化實行了動態的管理，各地政府造價管理部門定期編制和發佈有關造價指數，對建築工程造價中的材料價格進行適時調整。隨著建設市場化程度的不斷增大，無論是業主還是承包商都需要根據工程本身的情況和市場多變的因素加強對專案工程造價的控制，在這樣的環境下，工程造價諮詢行業應運而生。

90 年代中期國內逐步形成了工程造價諮詢市場，在工程造價諮詢業發展的初期，從業的主要是設計單位、建設銀行、政府造價管理部門設立的工程造價諮詢機構，以及部分私營和個體從業者。為了保證工程造價諮詢行業的健康

發展，1996年由建設部制定了“工程造價諮詢單位資質管理辦法(試行)”，對工程造價諮詢單位進行規範管理，明確工程造價諮詢要面向社會接受任務，承擔建設專案可行性研究估算、工程設計概預算、工程結算、工程招標標底和投標報價的編制和審核等有關工程造價諮詢業務。政府對具有法人資格的企業和事業單位從事工程造價諮詢的，根據其技術力量、單位的人員素質、組織機構、註冊資金和服務業績等方面核定資質等級，並按甲、乙、丙三個等級進行登記發放資質證書。

按照造價諮詢單位資質管理辦法規定的資質標準，建設部於97年、98年分別審查批准了甲級工程造價諮詢單位530家，各省及有關專業部門審查批准了乙、丙級工程造價諮詢單位近5000餘家。實施工程造價諮詢單位的資質管理是政府培育和發展工程造價諮詢業主要措施。

## 二、工程造價諮詢業的規範化管理

工程造價諮詢單位是建設市場主體之一，他屬於仲介機構，在建設市場中為業主、承包商及有關各方提供工程造價控制和管理的專業服務。仲介服務要求其從業活動具有獨立性和公正性。由於工程造價諮詢市場形成的時間不長，以及工程諮詢單位處在初期階段，因此，難免存在著部分工程造價諮詢單位的服務不能令人滿意的情况，如獲取業務、完成諮詢工作的質量、收費和公正性等方面還存在一些問題。

為了維護工程造價諮詢市場的秩序，規範工程造價諮詢單位的行為，建立公平、公正和平等競爭的市場環境，建設部於2000年初發佈了《工程造價諮詢單位管理辦法》的部令，管理辦法將工程造價諮詢單位的資質分為甲、乙兩級，並對資質標準重新做了規定。如甲級工程造價諮詢單位資質主要標準為：單位具有從事工程造價專業的工作人不少於20人，取得註冊造價工程師註冊證書的人員不少於8人，註冊資金不少於100萬人民幣，近三年完成5個大型或8個中型以上建設專案工程造價諮詢工作。該辦法還對工程造價諮詢單位資質申請與審批、資質管理、業務承接、法律責任等做了規定。

2000年政府主管部門和中國建設工程造價管理協會，根據國務院清理整頓經濟鑒證類社會仲介機構要求，部署了工程造價諮詢單位與政府部門實行脫鉤改制工作，規定所有政府部門、行業協會經辦的工程造價諮詢單位在人員、財務、職能、單位名稱等方面在限期內脫鉤。工程造價諮詢單位在與主管部門脫鉤同時進行改制工作，按照國內的有關法律和國家對仲介機構脫鉤改制工作的要求，都要改製成為合夥制企業或有限責任制公司。其中對改製為有限責任制公司的要求是須有5名以上具有造價工程師資格的人員共同出資。

至2001年下半年，工程造價諮詢單位的脫鉤改制工作基本完成，並取得了明顯的成效。各類工程造價諮詢單位由脫鉤改制前6000家縮減到4000家，大約90%為有限責任制公司，成為自主經營、自擔風險的經濟實體。

## 三、工程造價諮詢業今後發展

與香港較為成熟的建設市場相比較，國內工程造價諮詢業發展的歷史還不長，在發展的過程中還有一些新問題需要解決，最近協會與政府主管部門一起研究和制定工程造價諮詢業今後發展的政策和措施，這些政策和措施主要著眼於以下幾個方面：

1. 進一步規範工程造價諮詢市場。目前雖然把住了工程造價諮詢單位資質審批、即市場准入這一環，但對市場的有序規範、公平競爭、服務質量的監督管理及工程造價諮詢業行業自律機制的建立等方面，今後仍需要作大量的工作。

按照國家的統一部署，從2001年開始對國內的建設市場進行清理整頓工作，其中一項主要工作就是解決建築工程規避招標和招標投標中弄虛作假的問題，為此建設行政主管部門今後要加強對參與招標投標工作的主體資質條件和執業行為進行監督檢查。協會將配合建設行政主管部門對在工程造價諮詢業務中違反國家有關規定和執業道德的行為的個人和單位進行嚴肅的查處，包括取消註冊造價工程師資格和工程造價諮詢單位資質。同時我們將依據菲迪克條款，組織業內的專家起草《工程造

價諮詢單位執業行為準則》、《工程造價諮詢合同示範文本》等有關規範性的文件，並在實際工作中認真組織執行。

2. 不斷增強工程造價諮詢單位的實力。目前國內工程造價諮詢單位普遍實力薄弱，公司規模偏小，技術力量不強。面對市場的變化和競爭還不能及時應對，尤其是加入WTO以後，面臨的形勢更加嚴峻。針對這些問題，我們將在完成工程造價諮詢單位脫鉤改制工作的基礎上，對諮詢單位今後的發展和自身建設加強引導和服務。協會將在調查研究的基礎上提出今後幾年的發展戰略，做好與有關方面的協調工作，開拓工程造價諮詢市場，鼓勵和支援工程造價諮詢單位增強實力，提高水準，開展全過程的工程造價諮詢服務，即為業主提供從建設專案可行研究工作開始到工程竣工決算的工程造價諮詢服務，支援工程造價諮詢單位通過合理合法的競爭作大作強。今後隨著工程造價諮詢市場激烈的競爭，按照優勝劣汰的市場發展機制，必然會有一批企業不可避免的會淘汰出局，而管理技術水平高、服務貼近市場的企業將擁有更大的商機，工程造價諮詢單位的兼併、重組將是今後一個時期的發展趨勢，對此我們將積極研究有關政策，對這項工作我相信香港測量行發展的歷史和經驗對我們制定相關政策會有一定的借鑒作用。

3. 加強工程造價諮詢人才的培養。工程造價諮詢業可持續發展的關鍵是不斷提高工程造價諮詢從業人員的素質。如大家所瞭解到的，國內自建立造價工程師執業資格制度以來，造價工程師在工程造價諮詢市場中發揮作用越來越大，目前經過認定和通過考試的造價工程師有32000人，取得註冊資格的29000餘人。但就國內的市場容量而言，在工程造價諮詢業中，具有較高層次的造價工程師所佔比例不高，資訊好、技術水平高、影響大的大型造價諮詢單位少。今後一個時期我們將著力於現有註冊造價工程師執業水平和能力的提高，主要通過短期培訓和制定造價工程師繼續教育制度等途徑，使國內有相當一批造價工程師的水平能夠達到國際上相同專業人員的水平，為此協會將經常的組織香港和國外資深的專家到國內講學。也可以選拔優秀的人員到香港和國

外進行短期工作，學習國際上工程造價好的經驗。從長遠來看，為保證造價工程師的水平，發展學歷教育是一條根本途徑，我們正在進行研究和論證工作，也同國內的部分高等院校進行了初步的接觸，從各國的經驗看，高等學校與行業協會共同培養高素質的造價工程師專業人才是較為通行的做法。

4. 逐步加大工程造價諮詢市場對外開放的力度。2001年中國加入世界貿易組織後，按照中國在進入WTO所作的承諾，中國的建設市場乃至工程造價諮詢市場將加快對外開放的步伐。按照有關規劃，工程造價諮詢業在中國加入WTO後5年內允許國外設立國外獨資企業。就目前而言，現行的有關規定對香港地區和國外工程造價諮詢企業進入中國有一些限制，如建設部74號部令《工程造價諮詢單位管理辦法》中規定“政府投資、國有單位投資以及政府、國有企事業單位投資控股的建設工程，應當委托具有相應資質的國內造價諮詢單位進行工程造價諮詢。”和“中外合資以及利用國外金融機構貸款建設的工程，原則上由國內甲級工程造價諮詢單位承接工程造價諮詢業務；確需國外工程造價諮詢單位參加時，應當以中方為主，採取中外合作的方式”。國內工程造價諮詢市場對外開放是香港及國外非常關切之事，最近也經常向我們提出詢問申請設立中外合資、中外合作工程造價諮詢單位，我們歡迎香港的同行充份利用這5年的寬限期與內地甲級工程造價諮詢單位採取合作、合資的方式進入國內工程造價諮詢市場，我們正在組織調查和研究規範合作合資企業的資質管理。

各位女士、各位先生，今天我非常高興有這樣的機會向大家簡要地介紹中國工程造價諮詢業的發展和未來。隨著中國經濟的發展逐步與世界經濟融為一體的趨勢，特別是中國加入WTO後，國內各行各業改革開放將會向更高的層次發展，因此在這樣國際和國內的大環境下，中國工程造價諮詢業的發展也將面臨許多機遇和挑戰，我們願意和香港的同行們一道更加努力的工作，在新的一年裏為中國工程造價諮詢業的新發展作出貢獻。☑

## BACK TO BASICS

Efforts are needed to make the land administrative process more efficient. Achieving that will help draw in more land revenues and ease budget deficits, according to expert

Martin LEUNG, Jazz WONG and Jim YIP



Martin Leung

Jazz Wong

Jim Yip

With prices in decline for nearly five years, property might have lost its shine. Land sales are no longer the Government ATMs. Yet before a new economic driver emerged, land revenue, viewed as a form of tax incomes, was probably the most reliable contributor for the Government coffers. Its significance seems even more crucial in an era of budget deficits. It is of a pressing need to search for new measures to squeeze an extra dollar out of our land. But finding the solutions are not easy.

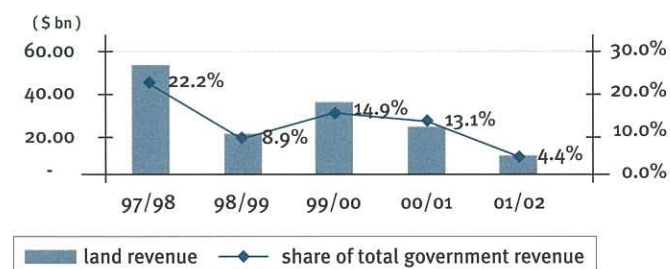
At a time when the market is still largely dogged by oversupply and falling prices, pumping up land sales is obviously not a clever idea. It would only exacerbate the fall in property prices and the total land revenues fetched could be even lower.

In a bid to help the market work out its excessive inventory without adding further pressure which would prolong the current downturn, the Government resolved to scale back the land sales program in the last and current two fiscal years.

Like last year, only 5 ha of land, mostly made up of small plots, was put up for sale in public auctions in this fiscal year, while the large part of annual land supply were put into an Application List which are only sold at the request of the developer. The key advantage of this land sales mechanism is that land supply is determined by market force, not by the Government.

Land sales including land premium from lease exchanges and lease modifications in fiscal year 2001-2002 fetched only HK\$9.8bn, the lowest record in a decade. The figure was even lower than the fiscal year 1998-1999, when there was a nine-month land sales moratorium in the year. The effect of dwindling land sales has seen its share of total Government revenues tumble in recent years. Last year, its share was only 4.4% whereas in the boom year of 1997-1998 it was 22.2%.

### Land revenues are falling... so do its share on total government income



Source: Hong Kong Government

The infamous asset bubble in the pre-crash 1997 produced much bigger land revenue and its share of total Government incomes during that period. Hong Kong was the envy of the world with the Government seemingly having a large war chest to spend on world-class infrastructures and operate the world's largest subsidized housing sector, and yet our tax rate was the lowest amongst others. The magic behind the "low tax haven" worked on an overtly simple formula: a large population of feverish property buyers + few than 100 land-hungry property developers = high land price = astronomical land revenues for the Government.

High reliance on land revenues for the Government's income is a double-edged sword. During the long market bull like the 90s, incomes balloon; in prolonged lean years, revenues slump and the Government faces a mammoth task to find alternative means to make up the large shortfall in revenues and rein in the budget deficit.

Besides cutting the spending and selling public assets like MTRC privatization in 2000, the Government also resorts to raising

taxes and contemplates to enlarge the tax base - a policy unlikely welcomed by the public. A land departure tax will be implemented later this year and currently a study for a new tax on retail spending is well underway.

As we are now entering into a new era of trade globalization with China's accession to WTO, competition from our neighbors is intensifying. Not only having to provide value-added services, we also have to be relentlessly guarding our cost front in order to stay ahead in the competition. Inevitably, rentals and land costs are to fall, followed by labour costs.

Days of rocketing property prices are truly gone and it is beneficial to Hong Kong. Land revenues are no longer the dominant stable in fiscal finance and its share in total fiscal revenues may stay below the 10% mark in the future.

However, land premium is still a sizable source of income for the Government. In late April's first land auction for the new fiscal year 2002-2003, the Government sold all four residential lots and fetched a total land price of HK\$2.97bn, a figure even more than the aggregate sum of all land sales in the last fiscal year i.e. HK\$2.67bn.

The resurgence of keen property interests are backed by robust new property sales in recent months as well as the Government's ongoing effort to revamp the housing policy which is becoming more favorable to the housing market.

The improving property sector help the Government rake in bigger-than-expected land profits, providing much needed incomes. Besides land sales, there are other indirect methods that the Government can use to boost incomes, such as streamlining the land administrative work, reducing red tape and speeding up the land premium negotiation process, according to Mr. C.M. Mo, former Deputy Director of the



Mr. C. M. Mo

Lands Department. Mr. Mo retired and set up his own consultancy in 1998 after 33 years of service in the public land administration work.

"In a tough situation like now, we need special measures," said Mr. Mo. "If we can have a more flexible policy and efficient land administration system, we can attract more investments,

create more jobs and stimulate the economy, not to mention to increase revenues for the Government. The Government has to be more innovative and creative to devising new policies to suit the special circumstances that we are now facing."

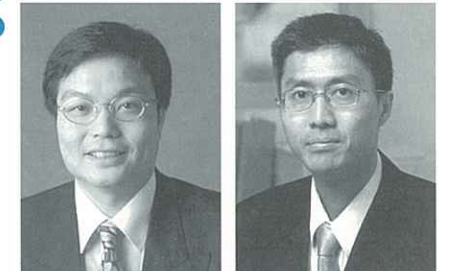
One case in point, the Lantau Cable Car Project linking Tung Chung to the Big Buddha. Work has not started since it was earmarked by Chief Executive Tung Chee Wah as the core project to revive tourism in his 1998 policy speech. It would be a major attraction for tourists. However, the 4 years' wrangling with various government departments on the land use has seen the project in tatters. Even after the project announcement, the Planning Department has zoned the areas in the Outline Zoning Plan as Green Belt (GB), instead of Other Unspecified (OU) uses. At least a further one and half year's development time will be required to lift the zoning.

"The long development process is clearly not conducive to the community. Different government departments must work together and show flexibility in handling the development projects. The Government officials must change their mindset: they work for the project as a whole, not for the rules relating to their own discipline," said Mr. Mo.



## VALUATION ADVISORY SERVICES IN A REGIONAL CONTEXT

YU Kam Hung, FRICS, FHKIS, Director of Valuation Advisory Services Department,  
Jones Lang LaSalle  
Harry CHAN, MRICS, AHKIS, Senior Manager, Valuation Advisory Services Department,  
Jones Lang LaSalle



Yu Kam Hung

Harry Chan

C.M. Mo adds his own view on the currently much-debated government ministerial proposal. He thinks it will be better if the Housing Bureau, Planning and Lands Bureau and Works Bureau are merged and governed under one single policy branch. "In the old days, in the early 70s, when the Director of Public Works was in existence, the system worked in this format and whenever there was a clash in policy with different departments, we would go to the Director and he had the power to make a decision. Workflow was not obstructed. It was quite an efficient system," he said.

Although the land sales results from auctions attract most of the public attention, land premium incomes from lease exchange and modification actually weigh a lot more. To increase land revenues, it works better if we have more successful lease exchange cases and thus generate more land premium.

While the market downfall is blamed for slowing the developers' intention on developments, the tedious lease modification process is also one factor leading to the decline in the success rate. We have yet to see John Tsang, the new Secretary for Planning and Lands Bureau, to make headway on that. John has expressed his intention to improve the transparency and efficiency of the Lands Department when he met David Wan, the immediate past HKIS JO chairman in September last year, two months after his appointment. (<http://hkis.org.hk/publication/surveying/v1o19/jo.html>)

"The market has changed very fast in recent years but until recently, the Government has been slow in reacting. In a falling market you need to reach a quick decision on negotiation and

secure land premium payment from developers. After bouts of many talks you only end up with a lower premium," said Mr. Mo. Mr. Mo still holds a proud record of one of the most valued government auctioneers. Land sold under his hammer in between the years 1982-1988 valued a total of \$1930.76m. So far, he is still the only one in government who conducted land auctions using both English and Chinese at the same time. He is obviously an expert in land sale tactics.

"The Lands Department should consider to adopt a practice that is common in the private sector where one surveyor is in charge of the whole project with only minimal supervision. It is not uncommon for cases to be considered by two different groups of professionals, thereby causing long delays in the process. Streamlining the process will save time and help developers to roll out their projects faster," Mr. Mo proposed.

Encouraging signs are emerging that the Lands Department has been more flexible in its land premium negotiation approach. There were more land premium deals in recent months. Notable examples were a packaged deal for Sun Hung Kai Properties over an assortment of several redevelopment properties, MTRC's Tseung Kwun O project and Tung Chung Phase 2 Project.

In coming August, HKIS Junior Organisation is proud to present Mr. C.M. Mo's talk on difficult valuation assignments. Mr. Mo will share with us his experience on tackling a land premium assessment project in which a valuer has to overcome an unusually restrictive lease clause and assess the implication from previous court case judgements. Stay tuned for the event! ■

### Introduction

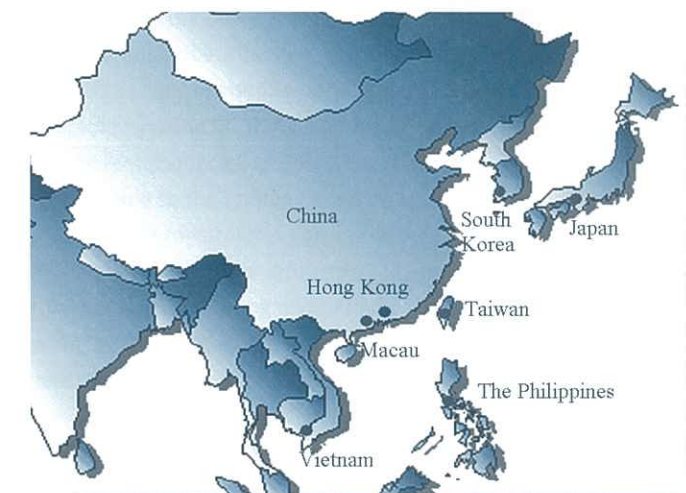
With increasing international trade and globalization of business process, more multinational corporations ("MNC") have been doing business on a global or at least regional basis. Managing the MNC's investment portfolio is a challenging job in respect of the diverse variety of culture, geographical location and market practices. To facilitate their management, MNC clients increasingly demand international property consultants to provide one-stop services with a single point of contact. Professional competency, local market knowledge and consistency in practice are key elements in providing value-added services to these global clients.

Although markets in the North Asia region like China, South Korea, Japan, Taiwan, Vietnam and the Philippines have different political framework, history, culture and market practices, they maintain close economic links as a regional investment hubs. The North Asia region provides international property consultants with good opportunities to develop more sophisticated skills and market knowledge.

In this article, we would discuss some property market practices in the North Asia region including China, Taiwan, South Korea, Japan, Vietnam, the Philippines and Macau.

### Land System

The principal form of tenure commonly found in Asia countries and cities is freehold. Land systems in China and Vietnam consist of land use right which is similar to leasehold interest in western countries. In China, the Government grants land use right for a specific term, say 70 years for residential uses and 40 years for commercial uses.



Under the land law in Vietnam, freehold title of land is not available for foreign nationals or enterprises which at present can only hold a land lease. Land use rights granted to foreign investment companies would usually be in the region of 30 to 40 years, but recent trends have shown a number of extensions granted by the authorities as a measure to help stimulate foreign investment.

In Macau, apart from freehold land owned by private owners and leasehold land granted by the Government, a land interest under a traditional Chinese land lease is also found. Before the Portuguese possessed Taipa in 1851 (Coloane in 1864), local people who owned the land had traditional Chinese land leases that were recognized or endorsed by the then Qing Dynasty Government to certify their legal title in the properties. They transferred the land based on these title documents. Nowadays, some of the land in Coloane and Taipa are still under such property title. The validity of this kind of title documents remains

a question and the Macau Special Administration Region (“SAR”) Government does not recognize this kind of title documents. However, transactions of these land titles are still undergoing in Macau but relevant legal issues and procedures are quite complicated and time consuming.

### Essential Documents in Relation to Property Title

Property title is one of the essential items to be clarified in preparing valuation. Valuers normally request their clients to provide relevant documents in relation to the property title for the purpose of valuation advisory. Title documents are normally written in local languages. Some essential documents are set out below for reference.

#### PRC

- State-owned Land Use Right Grant Contract
- Land Use Certificate
- Title Realty Certificate

#### Vietnam

- Investment Licence
- Land Use Right Certificate

#### The Philippines

- Transfer Certificate of Title
- Condominium Certificate of Title

#### Macau

- Government Lease
- Technical Memorandum

#### Taiwan

- Land Ownership Certificate
- Building Ownership Certificate

#### South Korea

- Land Lease
- Land Utilization Certificate
- Construction Permit

#### Japan

- Land Lease
- Construction Permit

In Vietnam, foreign investment companies obtain an Investment Licence from the Government for any industrial or real estate development projects prior to land grant. Under the local law, the term of a land lease granted to a foreign investment enterprise

would conform to the operation period granted to the enterprise. Other investment conditions like use of land and site area stated in the Investment Licence are consistent with that in the land use right certificate.

### Comprehensive Land and Building Registry Systems

To check the accuracy of property information provided by the clients, professional valuers would make enquiries to relevant government authorities and collect relevant information from government sources. One of the major sources is the local land registry office. In general, there are laws or regulations governing the registration of real estate in the region. Most of the Governments have established various land registration systems to record the property interest and such information is available for the public.

Title and property information contained on the land registry records varies from one country to another. The land registry records are normally printed in the local language whilst in Macau they are printed in both Portuguese and Chinese, after the establishment of the Macau SAR Government on 20 December 1999.

In China, the name of the registered owner, property information such as land use term, permitted uses, site area or gross floor area, and encumbrance of the property are contained in the land registry records. In addition to the above-mentioned information, the land registry records in Macau also provide reference to relevant government documents and approvals in connection to the property.

South Korea, Japan and Taiwan adopt both land registry and building registry systems. The real estate registration system in South Korea is fairly comprehensive. Land Ledger and Building Ledger contain information such as lot numbers, site areas and building areas respectively. Land Registry Records and Building Registry Records provide information on ownership, history of ownership, encumbrances on the land and buildings of the property respectively.

The building registry system in Taiwan provides useful information on building units. Building Registry Records contain gross floor area breakdown, floor layout plans, completion date and structure of the property. Such information would facilitate valuers to check the relevant information of the property under appraisal.

### Conventional Unit of Area Measurement

China, Vietnam, the Philippines and Macau officially adopt the international metric system for area measurement. However, local people in the Mainland China are used to quoting land area in the traditional measurement unit, “mu”. For some Asia markets, like Taiwan, South Korea and Japan, local people usually quote conventional units for area on gross floor area basis. Although the conventional area units of these markets are different in name, they are similar in area per unit that approximately equals to 3.3 square metres. Conventional units of area measurement and its equivalent area in square metres in various markets are listed below for reference.

Market	Conventional area measurement unit and its equivalent approximate area in square metres
Taiwan	1 Ping = 3.3 m <sup>2</sup>
South Korea	1 Pyung = 3.3 m <sup>2</sup>
Japan	1 Tsubo = 3.3 m <sup>2</sup>
China	1 mu = 667 m <sup>2</sup> (mainly for land area)

### Lack of Public Domain for Property Transaction Information

Market transactional information in the various regional markets is very limited for the public. There is a lack of general public domain for property transaction information and the transparency of market transaction is low in such markets. Some local appraisal firms, which have their own agency and investment departments, could have first hand information on market transactions. If local appraisal firms could not obtain any transactional evidence, they would rely on asking comparable prices or rentals in doing valuation. A Taiwan valuer told us that they would collect the asking comparables and adjust the asking prices downward, say by 10%, to arrive at a value of a property. Although such valuation practice is not common in a mature property market, it is easy to see how difficult doing valuations is in such markets. Therefore, good local market knowledge and high professional capabilities are key success factors for the international property consultant firms in the opaque markets.

### Local Approaches vs International Approaches to Valuation

Real estate appraisers in most of the markets in North Asia region usually adopt international valuation practices. Market approach and income capitalization approach are commonly used for valuing investment properties. In Taiwan, South Korea and Japan, many local valuers would value the land portion and building element of a property separately. The valuation approach they adopted is similar to depreciated replacement cost approach. It is common in the mindset of local valuers that land is valuable and would have capital appreciation whereas building structures will depreciate as time passes.

In analyzing the sales comparables, they would divide the transaction price into two portions for land and building elements respectively. They would assess the land value of the property by using the market approach or by making reference to land tax announced by the Government. In assessing the value attributable to the building element and improvements, they estimate the construction cost of the building structure in new condition and allow appropriate depreciation for the construction cost having regard to the age and condition of the building structure and improvements. The sum of land value and building value is the market value of the property. Although this valuation approach is considered controversial on an international perspective, such approach is commonly adopted by local appraisers and relied on by local market players during market activities.

### Conclusion

In view of the varied culture, historical background and market perceptions, various markets in North Asia region have different land systems, land registration systems and market practices. International property consultants doing valuation advisory work in these markets have to understand the market practice in depth whilst exercising reasonable skills of an international standard in order to provide valuable advice in a prudent manner. Although overseas consultants may have difficulties in obtaining reliable market data and face language barriers, it remains a challenging market place to provide advisory services and at the same time presents an interesting learning opportunity for those that wish to explore that little bit further. ■



## SURVEYOR'S SURF

*Stephen CHUNG, Zeppelin Real Estate Analysis Limited*

The author has recently read an article in the South China Morning Post featuring Ian Fleming, the creator of James Bond. Forty years has past since the first Bond movie Dr. No was made. How time flies! Admittedly, watching Bond movies was a memorable part in your author's childhood = secret weapons (a cigarette that fired a bullet was already awesome enough = boy, were we easy to entertain!), special gadgets (we craved for one of those tiny bugs that sent out radio signals of the whereabouts of someone who had been bugged. We were kind of thinking of getting one for our school headmistress i.e. in today's terminology school principal), wonderful tourism and sightseeing (well, way back in the 60s, few Hong Kong people could afford to travel, much let alone take a vacation overseas = many baby-boomers did not even get their first plane ride until they reached their 20s = so watching a Bond movie was a relatively inexpensive way to "see the world" without having to travel), exciting parties and carnivals (where chase scenes occurred), nice cars (I still prefer the Aston Martin = in those days, it was British made cars for British trained agents. Maybe the recent switch to a BMW reflects the EU reality), easy listening movie title songs (many of these are still played today), Moneypenny, M and Q and not to mention, shall we say, the beautiful people (except the bad guy = don't know why, it was always a guy until recently). Bond was also kind of like a role model to some e.g. the character was a very learned person. There seemed nothing that he didn't know, ranging from the make of red wine (a sip and he could accurately tell which year and where = try beating that Hong Kong wine lovers), the arts, world finance, politics etc all the way to industrial products and nuclear bombs. And the character attended Cambridge U (so you studied hard and wished one day you'd be able to get there too. Naturally, that didn't happen and well, surveyor I'd be). If my memory serves me right, 5 actors had played the role of

"Bond, James Bond" though your author would vote for Sean Connery any day.

While Bond liked his martini "shaken NOT stirred", the following sites had survived the "shaken AND stirred" world of dot-coms:

<http://www.estate-china.com/>

This is a real estate information and content website of the (translated) China real estate information website. It covers dozens of major cities in China and features projects for sale and so on, apart from the latest market news. The site is mainly written in simplified Chinese.

<http://www.chinahouse.gov.cn/>

This is the website of the Center for Housing Industrialization Promoting and features the latest news, regulation notices and the like related to housing development. The site is written in simplified Chinese.

<http://realtor.org/intlprof.nsf/1c8e38bf483f911d8625681100462df1/795d510ee23d333f86256ae300666c53?OpenDocument>

This is a report published in the National Association of Realtors (USA) website and is a good basic reference for getting an overall impression of the real estate markets and potentials in China. The site also contains other valuable content including links to information and useful resources globally.

<http://www.insigniaesg.com>

The site belongs to the Insignia ESG group in the US and once the homepage is entered, click on "Market Reports". You will see a summarized report on some of the major markets and cities with comparisons of vacancy rates, rental rates and so on. Not only that, it also contains sessions on other global markets including Asia's.

<http://www.mycorporation.com/Limpart.htm>

This is part of MyCorporation.com and explains what limited partnerships are and how they function. While this form of incorporation does not seem to be popular in Asia, it is quite commonly used in North America. Essentially, in typical limited partnerships, you would have a General Partner(s) running the show while the Limited Partners (investors) could enjoy the profits (if any) yet limit their losses to what they have poured into the venture. This is also used in certain family-related investments.

<http://www.northamericanrealty.com/index.html>

This website belongs to a consulting company called North American Realty Advisory Services, which specializes in the development of and problem solving for environmentally impaired properties. It has a basic Q & A section giving a hint of the resources and involvement required and a few project samples.

<http://www.dividenddiscountmodel.com/>

This site is brought to you by Duke Realty Corporation and it features among other things, financial / real estate indexes a Dividend Discount Model. Just enter the ticket code of a stock and a discount rate, the results will be calculated automatically. Neat for those who have investments in US assets.

<http://realtor.org/NCommSrc.nsf/pages/StreetSmarts>

This is also found in the National Association of Realtors website, yet this portion reflects their lighter side. You will find a few interesting definitions of capitalization rate, eminent domain, fair market value, highest and best use and so on.

<http://www.myparentime.com/calculators/calculators.shtml>

This is a site for parents and kids to have fun learning together. It features 3 dozens of 'calculators', ranging from taxes, interest payment and so on, all the way to finding out your 'age' should you end up in another planet in the solar system. (Tip: to become 'young' or 'younger', go as far away from the Earth and the Sun as you can).

Bond always gave the impression that he's not the 'settling down' type, always on a mission, always traveling, always enjoying himself. Yet, the character had actually and "really" got married once in one of the movies (Tip = not the fake marriage to a Japanese agent in You Only Live Twice). Which Bond movie did this (the 'real' marriage) take place? The answer will be revealed in the next issue.

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



### Interesting websites

<http://www.rics-foundation.org>

Information of works published by the RICS Foundation.



# Words Fail Me

(WHAT EVERYONE WHO WRITES SHOULD KNOW ABOUT WRITING)

Written by Patricia T. O'Conner

ISBN 0-15-601087-9

Cliff TSE, AHKIS, MRICS,  
Director of Valuation Advisory Services Department  
Jones Lang LaSalle Limited  
Email: [cliff.tse@ap.joneslanglasalle.com](mailto:cliff.tse@ap.joneslanglasalle.com)



It is almost doubtless that a good writing skill is one of the prerequisites for all professional surveyors who need to convey clear messages to clients/bosses, and want to elevate themselves in the social/corporate ladder. With the rising use of electronic mails, writing becomes part of our daily life (other than for sending gossiping emails or forwarding messages!).

Whilst you may wonder how to find good books on writing, let me recommend this to all members. This book, bought from a big bookstore in Seattle, USA, seems yet-to-be unavailable in local bookstores. However, it is readily available in some popular book-selling websites. Patricia O'Conner is the author of two language books, **Woe Is I** and this 228-page book. There will also be a new one to be published soon. She was an editor at the New York Times Book Review and her writing has appeared in many magazines and newspapers, including the New York Times and Newsweek.

As quoted from the introduction, **Words Fail Me** is about technique for making poor writing presentable and good writing even better. Think of it as a user's manual for words. This book is the perfect text for the young writer who tends to gravitate toward comedic instructors. O'Conner's material isn't new—like many such books, **Words Fail Me** advocates the use of small words, fresh verbs, and only well-chosen modifiers—but rarely is a language book so amusing.

The book is not just a traditional grammar handbook, but is both entertaining and informative. It is broadly divided into three parts. Part 1 - Pull yourself together - the five chapters instruct us to prepare ourselves before we start to ink. Whenever we

write, we have to know the subject very well, more importantly to know the subject inside out. And then we need to know the audience. Just take the example of this book recommendation, most of the content would be re-written if my audience were secondary school students. Arrange the ideas in a logical order, one idea leading to the next. Choosing the best commencement address is similar to the starting phrase we use for oral presentation. They determine whether the audience will stick around for the rest of your writings.

Part 2 - The fundamental things apply - brings us to more practical use of English writings. The fourteen chapters start from the rule of using plain words to use of creative verbs, from pronouns to misbehaving modifiers, etc. But all these chapters are not arranged in A-B-C ways to answer all your questions on grammar, syntax and word usage. Actually all her points are illustrated with lively examples and are very interesting to read. In particular, I like chapter 19 - Down for the count (when the numbers don't add up). This is a good reminder to some writers who are more concerned about the choice of good words than the sense of numbers. All words read well, but the numbers don't add up. But it would not happen to surveying people because most of us are carefully enumerating figures to earn our living!

Part 3 - Getting better all the time - leads us to a higher plateau of thinking about improving writing skills. Most of us write because it is the tool to communicate for job-specific needs, or for daily needs. If you want to improve writing for pulling in more audience to read what you express, these 11 chapters are

not to be missed. It starts from writing with perspective - to let your readers know your points of view, but you may need useful techniques if you need to switch points of view in the course of writing without confusing or disorientating your readers. More importantly is to get the attention of your readers. A writer makes promises, a glue, to keep the reader reading (or the audience awake). You've got to have rhythm in your writing and emotion to make the reader's imagination work for them. Lastly, but not least, getting to the finishing line. Revising is more than fixing what's wrong, it's making what's passable better.

In the final conclusion, the author said, "Writing can be a lot of fun". I would draw an analogy of writing to marathon running.

"Nothing beats the feeling you get when you're writing something good - except the feeling you get when you're finished".

Recently, when Jim Yip and I were exchanging tips on writing we both agreed that writing could be fun and enjoyable, especially on lots of unexplored topics on real estate-related matters. More interesting articles in this Newsletter would not only promote more intellectual communications between members, but also elevate the image of our profession when more non-members are reading our Newsletter. **S**

## The Community Chest

Mr. R.D. Pope, our General Practice member, has recently left the Civil Service after completion of service agreement of 32 years of service, and in the last nine years as Director of Lands.

He is very devoted to community service and actively participating in a number of charitable organisations, including being a member of the Organising Committee of the Community Chest. He has made an appeal to our members to support the work of the Chest by making generous donations.

## UPDATE OF GOVERNMENT PRACTICE NOTES

Department	Practice Note/Reference#	Description	Date	Home Page
Works Bureau	Technical Circular No. 17/2002	Interim Arrangements for Expediting Resolution of Objections under Statutory Gazettals.	8 May 2002	<a href="http://www.wb.gov.hk">www.wb.gov.hk</a>
	Technical Circular No. 16/2002	General Conditions of Contract for Term Contracts for Civil Engineering Works, 2002 Edition.	26 April 2002	
	Technical Circular No. 15/2002	Contract Advisers and Technical Audits on Works Contracts.	29 April 2002	
	Technical Circular No. 13/2002	Employment of Qualified Tradesmen and Intermediate Tradesmen by Contractors of Public Works Contracts.	19 April 2002	
	Technical Circular No. 10/2002	Professional Indemnity Insurance for Consultancy Service, Works Contract Involving Contractor's Design or Independent Checking Engineer's Service and Design and Build Contract.	11 April 2002	

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

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我們深切了解您的需要，讓您可以**相宜的保費**享用多種不同的保險產品。因我們主要以個人保險服務中心作為直接銷售途徑，免除額外支出，所以能提供較低的保費；此外，我們的客戶服務主任會為您細心分析您的實際需要，提供**專業分析及服務**，讓您省卻不必要的保險支出，務求令您及家人的生活得到**周全的保障**，時刻安枕無憂。

查詢各項保障及保費資料，請致電**香港測量師學會會員投保熱線 2903 9393**。

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蘇黎世個人保險服務中心 香港鯉魚涌英皇道979號太古坊多盛大廈18樓

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