

SURVEYING

VOLUME 3, ISSUE 11, NOVEMBER 1994

FROM THE EDITOR

Yes, I admit it, I am a humble brick counter. (Well, perhaps not quite so humble, but that is another story). Once upon a long time ago, so I recall, brick counters... well, counted bricks. They counted bricks so often that they even made rules on how to count bricks, and count tiles and reinforcing rods and manhole covers and door knobs and push plates and asphalt upstands. And they collected the wisdom of the brick counters together and they called the result a Standard Method of Measurement. And, yea, it was a mighty publication and the world, doubtless, marvelled in astonishment. So good were they at the hidden mysteries of counting bricks that the Architects murmured together and said so good are you brick counters at writing rules about counting bricks that we will also let you write rules about putting bricks one upon the other and we shall call the result not the Architects' form of contract but the Joint Contracts Tribunal form of contract. Called joint not because the brick counters joined with the Architects in writing the same, as you might think, but because Lo the brick counters employed by clients who wished to pay for bricks to be placed one upon the other joined with brick counters employed by contractors who wished to be paid for placing bricks one upon the other and agreed to agree upon the terms and conditions which should govern the aforesaid placing of bricks. Provided always that one excludes Government who could and did join, indeed who even led, in the writing of rules for the counting of bricks but who, concerning where the terms and conditions for the placing of the brick felt obliged, on grounds of public policy, to provide for the continued prosperous employment of judges, barristers, solicitors, claims consultants and, yea, expert witnesses and arbitrators.

These very same brick counters wrote also scales of fees for the remuneration of those who count bricks and write rules for the counting of bricks. Tell it not in Gath, but they wrote specifications to assist those busy Architects who were not sure how much dried pig's blood should be used in wall blacking. You have, I am sure, noticed that there are acres of wall blacking in Hong Kong, just as you will have noticed how much concreting in frosty weather happens, and how much hair plaster is applied to concrete walls. But the brick counters' specifications have to cover the eventuality, just in case.

Then, about twenty years ago something strange happened. The brick counters stopped writing rules. Or almost did. Over in the United Kingdom, they didn't, of course. There they carried on making more and more sillier and sillier rules

(even though they did stop using pig's blood in wall blacking). But in Hong Kong, they just stopped. They stopped writing rules on how to count bricks; they stopped writing terms and conditions to govern the placing of bricks one upon the other; they even stopped writing rules on what the fees for counting bricks should be. And no-one noticed. No-one, that is, except the judges, barristers, solicitors, claims consultants and, yea, expert witnesses and arbitrators, who rubbed their hands with quiet glee. Each brick counter, of course, being professional, did his own little bit of private writing. Each wrote subtly different amendments to the "standard" form of contract. Each wrote subtly different ways of measuring suspended ceilings and curtain walls and diaphragm walls and electrical conduits and such similarly challenging aspects of ultra modern technology. And each dreamt up a slightly different figure for the amount of dried pig's blood in wall blacking. Government, of course, on grounds of public policy, revised its terms and conditions of contract to ensure that the continuing prosperous employment of judges, barristers, solicitors, claims consultants and, yea, expert witnesses and arbitrators was not confined to the private sector.

And, surprise, those (except brick counters) in the construction business were unimpressed by the unending disputes that arose because documents and reality were about as closely related as Michael and Andrew Jackson. And they clamoured for Mediators and Conciliators and Assessors and Dispute Resolution Advisers so that they need not parade the vagaries of appalling documentation before judges, barristers, solicitors, etc, etc, at excruciating expense. And, lo, they got them. And, surprise upon surprise, they were all (well, mostly) brick counters. Thus has the utter 'inactivity' of the brick counting profession for twenty years been rewarded with prosperity, and thus has the foresight of our predecessors been showered with applause.

Yea, as an expert witness and an arbitrator, I laud and honour the policy of inactivity which has so wondrously blessed this corner of the profession. Not to mention, of course, the public policy which now blesseth the appointment of advisers to assist in the resolution of disputes which public policy created in the first place.

This is indeed shekels in the purse. But as a humble brick counter, I wonder when the leaders of the profession will get their act together and update the outmoded, outdated and unbelievably unprofessional documentation with which we (yes, we) saddle the construction industry in Hong Kong today. If we do not, someone else will. Soon.

Hong Kong Institute of Surveyors
President : Michael Mann, FRICS, FHKIS

Royal Institution of Chartered Surveyors
Hong Kong Branch
Chairman : Michael Mann, FRICS,
FHKIS

SURVEYING is the monthly newsletter of the Hong Kong Institute of Surveyors and the Royal Institution of Chartered Surveyors, Hong Kong Branch. It is distributed to members, students and friends of the surveying profession. Should you know of anyone not on the mailing list who would be interested in receiving a copy, please contact Surveyors Services Limited.

Members are invited to contribute to "Surveying". Articles, letters or notices should be received by the Editor by the 18th of each month for publication the following month.

The views expressed in this newsletter do not necessarily reflect the views of the HKIS or the RICS HKB. The Editor, Bruce Humphrey, reserves the right to edit any article received.

The Editor can be contacted through Surveyors Services Limited.

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DIVISIONS

LAND SURVEYING DIVISION ANNUAL GENERAL MEETING - CHAIRMEN'S REPORT

Dear Fellow Members

Throughout the year you might have read about many Divisional matters and issues in the monthly newsletters. You may remember some and may forget some. We have consolidated them here and are now happy to report the following:-

Land Survey Bill

The Bill is now in the hands of LegCo's Bills Committee. We wrote to the Chairman of the Bills Committee clarifying (a) the Scale of Professional Charges for Land Surveying Services, and (b) protection of the right of the consumer. The Institute is always aware of the maintenance of professional conduct, the ethics and professional standards of its members. There is a Disciplinary Board appointed by the President and approved by General Council to handle all complaints raised by members of the public. The Bill shall become the Land Survey Ordinance once it is enacted, hopefully at the end of this year. Any Member who wishes to practise and carry out Cadastral work must register as an Authorised Land Surveyor with the Land Survey Authority, and that is the Director of Lands. Our thanks go to the Convenor Mr K L Mok, and his drafting Committee.

Scale of Charges

The revised Scale of Professional Charges for Land Surveying Services was endorsed by General Council on 7th June 1994. Practising surveyors are advised and recommended to follow these guidelines, to protect both themselves and the consumer. Your future is in your hands - the Institute can only provide the mechanics for the betterment of your service to the community.

*"Professional Land Surveyor" and
"Reference Notes on Land Surveying -
Control and Mapping"*

These two booklets were revised to include the latest land surveying information and will be distributed to members after printing.

RICS/SST Career Structure

We consider that the technician grade of membership is necessary to our Division. We need good technicians to support the Land Surveyor's professional service, and if they are not included within the institutions it is very difficult to ensure quality of service. However, the Divisional Council considered that the bridging arrangements for transfer from Tech/F Surv to ARICS and hence to HKIS seems to be far too easy and that criteria should be strengthened. We recommend that students should be suitably employed and trained, and the academic component set to a suitable level.

Reciprocity Agreement

At present the Reciprocity Agreement between RICS and HKIS allows for one year's practice in the other's jurisdiction and a professional interview. For APC/TPC the Divisional Council is pursuing complete joint assessment conducted by the HKIS and RICS in Hong Kong

HKIS Management

Whilst agreeing with General Council that the employment of a Chief Executive would assist in promoting and marketing the profession more effectively, the Divisional Council felt that this matter should be deferred due to financial implications, and the outcome of the proposed RICS International Strategy.

Membership

More senior members were transferred to Fellowship and more young members joined as Professional Associates. We also welcome our first Honorary Fellow, Professor Chen Yong-Qi, Head of Department of Land Surveying and Geo-Informatics at the Hong Kong Polytechnic. Welcome to all of you - we hope that you will participate in Divisional and Institute functions and activities.

CPD Events

Many CPD events were organised. We had speakers from UK, Australia, USA, China and Hong Kong, with a wide range of topics from field surveying and scientific experiences in the Antarctic, to the changing cadastral system in South Africa and Eastern Europe due to political

change. We urge all members to participate in these events.

Social Events

The visit to the Three Gorges and WuHan Technological University of Surveying and Mapping was very successful and enjoyed by all who attended. Our other annual social event, the Annual Dinner was well attended and enjoyable, and our thanks go to Mr C M To and his organising committee.

Looking to the Future

The Divisional Council is presently considering for recommendation to General Council that membership of the HKIS be offered to Land Surveyors from a number of other countries following one year local experience and a professional interview. These countries are Australia, New Zealand, South Africa and Canada, whose Registered or Licensed Surveyors are recognised and accepted by the Hong Kong Government for appointment as Professional Land Surveyors.

It is also time to make contact with our counterparts in China to investigate some form of reciprocal recognition. We need to look to the future to establish a common standard in professional practice worldwide. We urge the incoming Council to take up this issue as a matter of urgency and work towards the full recognition of HKIS overseas.

Special Thanks

Recognition must be recorded to the hard work of the Hon. Secretary, Ms Winnie Shiu. Special thanks to her for her efforts, patience and endurance. We must also thank all Council members, Chairmen and Convenors of various committees and JO for their effort, time, contributions and support. Last but not least we thank our fellow members for their support.

We wish every success to the incoming Council, and hope that all members will give them the same support as to the outgoing one.

T N Wong
Chairman, LSD HKIS
K F Yeung
Chairman, LSD, RICS HKB

DIVISIONS

GENERAL PRACTICE DIVISION ANNUAL GENERAL MEETING - CHAIRMAN'S REPORT

Council Members, 1993/94:-

Stephen Yip	<i>Chairman</i>
K K Chiu	<i>Vice Chairman</i>
David Faulkner	<i>Vice Chairman</i>
Lyall Alexander-Webber	<i>Hon Secretary</i>
Brian Reid	<i>Hon Treasurer</i>
Nancy Hung	<i>Meeting Secretary</i>
John Corrigan	<i>Past Chairman</i>

S L Wong	Andrew Chan
Wilson Siu	Mike Price
Vincent Luk	Thomas Poon
David Forshaw	Edwin Tsang
Francis T Lau	Simon Tsui
Jeff Lam	Richard Aldridge
C K Lau	Peter Li

Representation at Government Advisory Bodies:-

LBAC Planning Sub Committee:-

Trevor Farnworth

LBAC Land Sub-Committee:-

Lyall Alexander-Webber

Working Group on Licensing of Estate Agents:-

S C Liu

Land Registry Customer Liaison Group:-

Francis T Lau & Charles Chan

Consumer Council Committee on Property Transactions:-

Stephen Yip

Surveyors Registration Board:-

Stephen Yip & Bob Pope

Registration on International Bodies:-

International Assets Valuation Standards Committee:-

John Corrigan

International Federation of Surveyors (FIG):-

Stephen Yip

GP In-House Convenors:-

Fee Scale Revision Committee:-

Francis T Lau & K K Chiu

Working Group on Asset Valuation:-

Thomas Poon & David Faulkner

Working Group on Town Planning Ordinance:-

Edwin Tsang & Trevor Farnworth

Working Group on Code of Measure- ment:-

Wilson Siu & Nancy Hung

Working Group on RVD Rental Informa- tion:-

David Forshaw

Working Group on Code of Mortgage Valuation:-

David Faulkner

Liaison on Vehicle Licence Plate Auc- tions:-

David Faulkner

CPD Co-ordinator:-

Mike Price

Official Visits:-

Participation in HKIS visit to Guangdong Lands Department in December 1992.

Participation in HKIS visit to Shunde City in April 1993.

Delegations received:-

Foreign Real Estate Information Centre, PRC, January 1994.

Chinese Society of Valuers, MoC, PRC, February 1994.

Legal Affairs Commission of National People's Congress, PRC, April 1994.

Bureau of Construction & Planning, Foshan City, PRC.

National Administrative Bureau of State Owned Property, PRC, August 1994.

Working & Study Groups on Current Issues:-

February 1993 - Ad Hoc working group to study Registrar General's proposed revisions to "Consent Scheme" and in particular a revised "Agreement for Sale and Purchase".

March 1993 - Ad hoc study group to study and comment on Lands Department "Processing of Building Plans" and "CDA Zonings".

March 1993 - Ad hoc working group to liaise with Securities and Futures Commission in preparation of guidelines for valuation of PRC properties.

April 1993 - Ad hoc working group to study and comment on Land Registry's proposal on computerisation of Land Office records.

September 1993 - Ad hoc working group to study proposed review of Town Planning Ordinance and Territory Development Strategy.

October 1993 - Ad hoc working group to study RICS Cubbon Report on constitutional changes.

December 1993 - Ad hoc working group to study and comment on proposed changes of Land Registration System in Hong Kong - the Land Title Bill.

March 1994 - Ad hoc working group to study and comment on new Outline Zoning Plans and comment to LegCo Committee.

May 1994 - Ad hoc working group to study and comment on "Task Force on Land Supply & Property Prices".

Services to Members:-

January 1993 - Revision to "Fee Scale" brochure.

June 1993 - Open forum to discuss surveyors' registration.

March 1994 - Open forum to discuss licensing of estate agents.

July 1994 - Revision to "Saleable Area" brochure.

August 1994 - Agreement with RVD to operate new system of provision of rental information.

Work in Progress:-

- (i) Code of Measuring Practice
- (ii) Fee Scale Revision
- (iii) Code of Mortgage Valuation
- (iv) Revision of Handbook of Asset Valuation Practice
- (v) GP Private Practice Directory



ROYAL INSTITUTION OF CHARTERED SURVEYORS - INTERNATIONAL STRATEGY

An outline of the proposed RICS International Strategy was given in the September issue of "Surveying". The draft International Strategy Paper has now been finalised, has been approved by the International Committee in London, and will be submitted to the RICS General Council on 14th November 1994.

This proposal will have a far-reaching effect on Chartered Surveyors in Hong Kong and this region. As promised in the September issue, therefore, below is a summary of the International Strategy paper as finalised, and the response to that paper which was submitted to the International Committee by the Hong Kong Branch.

The Hong Kong Branch will be represented at the General Council meeting by Michael Tibbatts, the Hon. Treasurer, RICS, HKB. The outcome of that meeting, and the implications to the profession in Hong Kong will be discussed at the Annual General Meetings of the RICS, Hong Kong Branch and the Hong Kong Institute of Surveyors on 29th November.

RICS - AN INTERNATIONAL STRATEGY : THE INTERNATIONAL COMMITTEE PAPER

The Need for a Strategy

There is a need for an international strategy in a world which is changing to one where national boundaries have less significance in the development of professional services.

In the absence of a strategy members outside Europe are querying the value of membership of an organisation which is perceived as being remote and not providing the kind of support services available to UK members.

There is a threat that professionals from other countries who are developing an

international identity will compete with chartered surveyors in the UK for work.

The Institution's existing reputation internationally is mainly in commonwealth or ex-commonwealth countries. As links with these countries lessen, its international reputation could be eroded if the profession does not seek to extend its influence into areas where it is currently almost unknown.

The range of skills under the banner of "chartered surveyor" is problematic in markets where property professionals are more fragmented and specialised than in the UK and the inclusion of "Royal" in the designation has a distinctly British or even, to some, an imperialistic flavour.

A Proposal for an International Strategy

The overall aim of this strategy is for chartered surveying to be recognised as an international profession. This should be achieved by encouraging the development of a significant local membership in each country or region of the world, which should be supported by an appropriate and meaningful regional organisational structure. Within the context of this strategy a plan of action for each region and country should be developed which is sensitive to local circumstances.

Organisational Structure

The membership, outside Britain, Ireland and Europe is organised into 44 overseas branches. Apart from Hong Kong these members look to headquarters to provide support and services. Generally, these services are seen to be inadequate and geared to the interests of UK members only.

For the Institution to seek to extend its influence from a London base would not only be logistically difficult but it could also be perceived by some as imperial expansionism which would be counterproductive to its aims. It is crucial that the overall aim of this strategy to achieve recognition for chartered surveying as an international profession is clearly understood and that it should not be perceived

as being the attempt of a UK body to extend its overseas interests. It is therefore recommended that the Institution accepts a worldwide regional structure, supported by regional officers and staff who can be seen to represent the profession in that area. The recently formed European Society of Chartered Surveyors provides an existing model which can be used to develop an appropriate format for this structure. To be consistent with this body the title "Asian Society of Chartered Surveyors", for example, could be adopted.

The aim of a regional organisation would be to raise the profile of the profession in the area and to gain recognition for it. It would also aim to give members in the area a relevant and meaningful support service. The preferred method for the resourcing for this structure would be by way of a local subscription.

The membership in each region should be consulted on the most appropriate regional groupings for the structure and on the kind of functions it would expect from the regional organisation. Given that resources are unlikely to be sufficient to establish several offices at once it is suggested that a pilot exercise be started within the coming session to set up the first regional office. Given the rapid changes in Hong Kong, China and South-East Asia, it is proposed that a pilot exercise to establish an Asian Society representing Chartered Surveyors in the region should be commenced.

Education and Training

There are courses in countries around the world which have been approved by the Institution and where, subject to APC training opportunities, the chartered designation can be obtained locally. It is recommended that the policy of approved courses outside the UK should be extended and developed.

Graduates from approved courses will need to complete the Assessment of Professional Competence. It is considered vital to the success of the strategy that the APC should be based upon the laws and practice of the candidate's country and

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wherever possible the assessment should be in the candidate's own language.

Promotion and Influence

The Institution in the UK pursues a policy of promoting chartered surveyors to the public, business and government and of lobbying on behalf of the profession. It is recommended that this policy be extended to other countries at a national, regional and international level. The policy at a national and regional level would have to be sensitive to local circumstances, the role of a regional organisation being crucial to its success.

Prominent Property Professionals

To strengthen the development of the profession internationally and to aid its promotion and influence it is recommended that prominent property professionals be invited into membership. Great care must however be taken to ensure standards are maintained.

THE INTERNATIONAL STRATEGY - RESPONSE FROM THE HONG KONG BRANCH

The Strategy

The Branch welcomed the International Committee recognition of the need for an international strategy, which it considered long overdue.

There is concern, certainly within the South-Asian Region, that the Institution continues to be regarded as being somewhat removed from its overseas membership, remote from international issues and concentrating purely on UK and European affairs. Consequently, the Branch believes that the Institution is in danger of losing its overseas members. Further, the Branch believes that the influence once wielded by the Institution in many overseas countries is in danger of diminishing.

The Branch agrees that this situation could be addressed by adopting a regional structure, with many of the func-

tions presently carried out by Headquarters being decentralised.

However, while supporting the principle of a regional structure, the Branch would not support any proposal to govern the regional bodies from London. The Branch advocates the creation of an international co-ordinating body, providing communication and liaison with regional centres. The regional centres should aim towards independence, with the strength and authority to manage their own affairs. The Branch does not agree that the regional structure can be supported by way of a local subscription along the lines of the present system in Hong Kong. Experience has shown this method to be cumbersome and unpopular amongst members. A method whereby members in each region finance their own regional centre by way of single subscription is likely to receive much more support. The regional centres should aim to become financially self-supporting.

One point which the Strategy generally does not address, is that there are a growing number of respected surveying bodies worldwide, a number of which already have reciprocal recognition with the Institution. The Branch considers that for effective promotion of the surveyors' skills, mutual recognition and co-operation with other professional organisations must be expanded and strengthened.

To allow the Branch to give a positive response in determining the role of a regional body, it specifically considered the proposed pilot scheme for the South-East Asian Region.

The South East Asian Region and the role of the RICS

The Branch agrees that the South East Asian Region may be appropriate for a pilot scheme. The profession is well-established and a considerable proportion of the RICS overseas membership is based within this region.

However, it should be noted that there are a number of well-established and respected local institutions in a number of countries throughout the region, some of

whom already have existing reciprocal arrangements with the RICS. RICS is not considered the principal surveying body within these countries, however, the Institution's international position is recognised, and it does therefore have a role to play.

The RICS, operating on a regional basis, would be in a position to take the initiative in developing a regional Association with other recognised local institutes becoming affiliated to this body. The RICS, in taking the lead in the development of this Association, could offer international/regional co-ordination, administration and support services. The Branch considers that this would allow co-ordinated promotion of the profession, development of education and advancement of mutually recognised surveying practices and standards.

It is also recognised that there are a number of developing countries within this region where the profession is in its infancy. These countries do not presently come under the jurisdiction of any existing professional body. Here, the RICS would be in an ideal position to take the lead in the development of the profession.

However, the RICS must enter into any such initiative with great care and sensitivity with regard to the established institutes. The RICS should assist wherever possible in the establishment of local professional bodies, and work towards a system of mutual recognition.

The Regional body could be administered from a central Secretariat which would provide support and services to all members within the region. It could also be suggested that the secretariat take on the role as the centre for a regional Association.

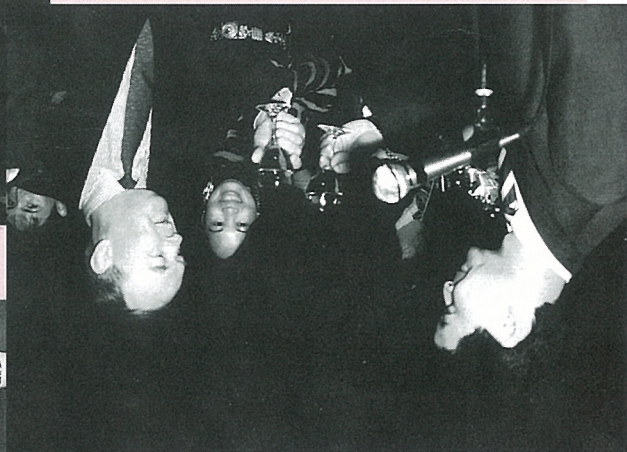
On the basis outlined above, the Branch would co-operate in the development of a South East Asian pilot scheme.

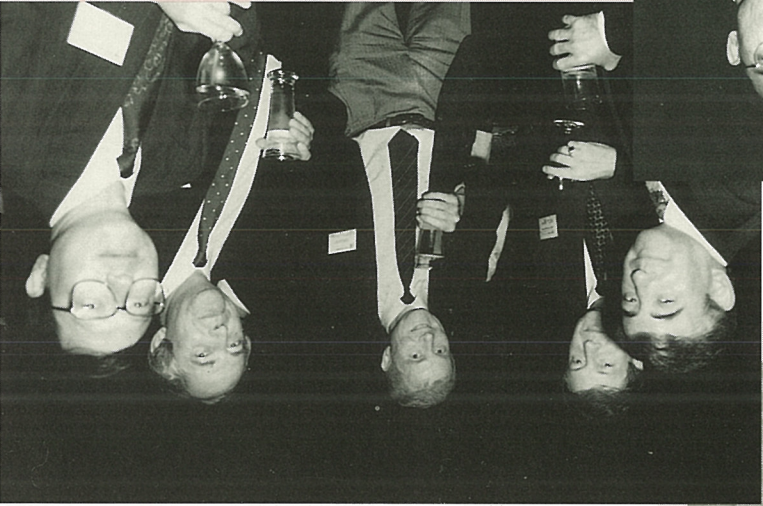


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HONG KONG INSTITUTE OF SURVEYORS - 10TH ANNIVERSARY

The President of the HKIS, Mr Michael Mann, hosted a Cocktail Party on 20th October at the Hong Kong Club to celebrate the Institute's 10th Anniversary.





SURVEYING

**LETTERS OF INTENT
(PART TWO)****BY C.J. WILSON
BAKER & MCKENZIE**

This is the second part of a two - part article on letters of intent, The first part appeared in the October issue of Surveying.

Agreements to Negotiate

Not infrequently, letters of intent include provisions to the effect that the parties will negotiate in good faith to resolve certain matters or will not negotiate with others.

What is the effect of such agreements?

This, first, depends upon whether the letter of intent itself includes any binding terms. If it does not, the agreement to negotiate is unlikely to have any greater than the rest of the letter.

However, assuming all other requirements of a contract are present, the ques-

tion is whether such an arrangement can be sufficiently certain to be enforceable?

The validity of agreements to negotiate has been considered by the Courts on a number of occasions. The law has not generally looked favourably on such agreements. This subject was last considered in 1992 in the case of Walford v. Miles which went all the way to the House of Lords.

The Court held that an "agreement to in good faith" which had been alleged in that case was unworkable and failed for uncertainty. Negotiation can involve many things, including temporary or permanent withdrawal from the negotiation table. An obligation to negotiate is simply unclear as to what a party is required to do.

The House of Lords, however, held that there was no reason why two parties, A and B should not agree that, for a specified period of time, B will not negotiate with anyone except A. A form of "lock-out" agreement of this sort does not lock B into negotiations with A. What A has

achieved in these circumstances is an exclusive opportunity to reach agreement for a fixed period.

In Walford v. Miles the agreement was held to possess the necessary characteristics of a lockout agreement save one-it did not state how long the lockout was to last for. This was held to make even the lockout too uncertain to be enforceable.

While lockout agreements may be enforced, they must be expressed clearly. Another consideration is length. If a lockout period is very lengthy, the Court may hold it to be invalid as an unlawful restraint of trade.

Lockout agreements present other problems for the draftsman. What is the remedy for a breach? If the party complaining of breach cannot demonstrate a good prospect that he would obtain the contract then it may be very difficult to demonstrate any recoverable loss.

Lockout agreements may nevertheless be useful in situations where one party must commit large resources to undertaking

THE HONG KONG INSTITUTE OF SURVEYORS
AND
THE ROYAL INSTITUTION OF CHARTERED SURVEYORS,
HONG KONG BRANCH

ANNUAL GENERAL MEETINGS**TUESDAY 29TH NOVEMBER 1994**

The AGM of the RICS Hong Kong Branch is scheduled for 6.00 p.m., with that of the Hong Kong Institute of Surveyors immediately following. AGM business is intended to be completed by 7.00 p.m. The second half of the evening will be devoted to an Executive briefing and a members' debate and discussion on the future of the institutions and the profession, their management, in Hong Kong and the region.

All members are strongly urged to attend.

The India Room
Hongkong Hilton Hotel
Queens Road Central
Hong Kong

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negotiations (carrying out surveys etc) and allows a party at least some comfort that they will not be "pipped at the post" after having made significant expenditure on preparations.

Limiting Enforceability

Where statements or requests in a letter of intent may give rise to liability, contractual or otherwise, it is sometimes appropriate to include a limit on the extent of that liability. This may, for instance, be by reference to a ceiling on expenditure before conclusion of a formal contract.

Where the letter is contractual, this causes no difficulty. The limitation takes effect if properly drafted, as a contractual limitation on the amount payable.

If the letter contains, instead, a request for work or services to be carried out, the limitation may, depending upon its wording, still have some contractual effect. Alternatively, the limitation may simply form part of and qualify the request for the work or services, so that the claimant cannot say that he was requested to do more than the value stated.

This sort of device is often used in construction situations where it may be necessary to proceed with work before contractual documentation has been settled.

If this is not done the Contractor having obtained possession of the site, and the right to a quantum meruit, is unlikely to give up these things easily.

Any limitation expressed in a letter of intent must be wide enough to cover the range of circumstances which may arise.

If the relationship of the parties develops beyond what was contemplated at letter of intent stage, the Court may simply hold the letter of intent no longer applicable and allow recovery of an unrestricted quantum meruit.

Effect Of Failure To Formalise

The effect of a failure later to formalise a letter of intent depends upon the standing of the original document and the intent of any statement that a formal agreement will be entered into.

Where the letter is intended to be binding in the interim, the parties intending to

repalce it in due course, failure to produce the formal document usually causes no difficulty. The temporary agreement will continue to govern in accordance with its terms (unless expressly limited).

Sometimes, in comparatively rare cases, reference to a formal agreement can indicate that the parties did not intend to contract at all pending execution of the formal agreement.

In such cases the parties rights arising from steps taken prior to their failure to agree depend upon ordinary common law and equitable principles which will be discussed in more detail below.

Rights To Payment Or Redress When Non Binding

The most common mode of redress is a claim for *quantum meruit* (a reasonable payment for work done).

A quantum meruit claim arises where one person does work for another at the request of that other in circumstances which indicate an intention to pay for what is done.

The obligation to pay arises as a matter of general law on the basis that the person requesting the work (or services) should not be allowed to avoid paying for it (or them) on the ground that there was no concluded contract.

Letters of intent frequently contain requests to begin preparatory or similar work on the assumption that a contract will be made in due course. If no contract can be found the Courts will often, as a last resort, impose an obligation to pay for the work done.

Such situations may actually place the party carrying out the work in a better position than they would have been under the intended contract if it had been concluded.

First, if there is no contract, they cannot be liable for late or defective performance.

Secondly, they may become entitled to be paid for preparatory work which normally would be provided as part of the transaction without separate charge.



**A.G. WILKINSON
& ASSOCIATES**

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LAND REGISTRY ON THE MOVE - A FULLY COMPUTERISED LAND REGISTER BY 1997

The following talk was given by Mr Kenneth T W Pang, The Land Registrar, to the Surveyors Lunch meeting on 29th September.

Land Registry Trading Fund

The Land Registry's predecessor was the Land Office of the Registrar General's Department, and on 1st May 1993, the Land Registry became a separate government organisation. Four months later, it became one of the first trading fund government departments to operate on a self-financing and quasi-commercial basis. The primary objective is to improve the quality of service to customers.

Two of the major services rendered by the Land Registry are first, registration of land documents, and second, provision of land search facilities. Over the past few years the demand for these services had increased significantly, so had the customer expectations in terms of speed and quality of service.

Since becoming a trading fund entity, the Land Registry has greater financial autonomy, with greater flexibility in applying its resources to respond more promptly to the changing needs of its fee-paying customers. More importantly, the development and implementation of a number of computerisation projects can be expedited; and these projects are now moving at a faster pace than would have otherwise been possible.

At present, only the Urban Land Register has been computerised but, until very recently, land searches for urban properties have to be conducted in person over the search counter at our Queensway Government Offices. In the New Territories, there are 8 NT Land Registries. Because all the NT land registers have not yet been computerised, land registration and search activities must be carried out in the appropriate NT Land Registry in whose district the concerned property

is situated. This is unsatisfactory and the need to computerise the NT land registers is long overdue.

I T Strategy

Our information technology strategy is to achieve a fully computerised, and unified, Land Register for the whole territory by 1997. In practical terms, we are building up a centralised computer system for all land registration and search services without any geographical boundary constraints. This will enable our clients to lodge deeds for registration in respect of any N T property with our centralised Land Registration Office; so they don't have to go to the concerned N T Land Registry like they do now. Similarly, land searches in respect of any property in the territory can be made through computer terminals at any one of our Land Registries or at the clients' own offices.

D A S Network

In fact, we have already taken the first major step forward in automating our land search services for properties in the urban areas. Last month, we launched our pioneer project called the "Direct Access Services", or more commonly known as DAS. This is a fully computerised land search facility, enabling our clients to make on-line searches of urban land records through their own computer terminals at their own offices without calling at our search counter in person. This information is transmitted through a network provided by IBM.

Since our recent launch of this new "Direct Access Services" the response from our clients has been overwhelming. In less than 2 months, we have received over 180 applications for subscription to the DAS, exceeding our target of 150 for the first year. At present, 28 corporate clients have already had their computer terminals connected to our DAS network with the system up and running.

Apart from making on-line searches of the Urban Land Register through the DAS

network, subscribers can also place remote orders for the supply of copies of land records; moreover, they can make enquiries about account and payment information.

Feedback on this new service from our clients has been most encouraging. They say that the DAS means considerable savings in their time, effort and cost in obtaining land register information. What's more, the DAS offers longer operating hours than the counter-search hours, and the computer network requires no lunch breaks like we do!

We plan to extend the DAS to the N T Land Registers as and when they have been computerised. This is fact hinges on the development of our second major project which is the computerisation of N T Land Registers.

N T Computerisation Project

Since May this year, we have commissioned a data conversion exercise for the N T land registers from paper records to computerised data under a 2-phase programme. "Phase 1" comprises the conversion of all the Town Lot registers on a district-by-district basis, and "Phase 2" will cover all DD and SD Lots, again on a district-by-district basis. The entire programme will take 3 years to complete.

However, we don't have to wait for 3 years before we can reap the benefits of the N T computerisation project. Once a computerised register is created for a property, registration and search activities can be undertaken in the computerised mode. For example, we have now computerised 10,000 town lot registers in the Tsuen Wan Land Registry; customers making search of these registers are provided with computer print-out containing all the required information, and they don't have to plough through the bulky register books any more.

Furthermore, we plan to incorporate the computerised N T land registers into the Direct Access Services network in phases, commencing from mid-1995. DAS sub-

SURVEYING

scribers will then be able to make on-line searches of both urban and N T land register information at their own offices.

Documents Imaging System

A third major I T project, which will further enhance the applications of the Direct Access Services, is the introduction of a Document Imaging System. When implemented, documents registered at the Land Registry will be imaged and stored in optical disc. The imaged records can be retrieved and transmitted to our client's office electronically through the DAS network, thus providing a very speedy and convenient record retrieval and delivery service of our clients who require copies of land documents kept in the Land Registry.

Other benefits of this imaging system are obvious - it would mean a significant saving in storage space and manpower resources in managing paper records; it would also provide better security and disaster recovery backup of land documents.

We plan to implement the Document Imaging System in all the New Territories Land Registries first, because the land records in the N T are still stored in paper form at the present time.

Detailed planning and development work is now underway. The optical imaging of N T land records will commence in the latter half of next year, and the system will be extended to cover the urban land records in due course. The document imaging project will be substantially completed by 1997.

Our Goal and Vision

So, our Land Registry is actively moving forward on all fronts to achieve our goal of having a fully computerised, and unified Land Register in 3 years' time.

By 1997 we should have a centralised land registration system whereby we can offer new and enhanced services to our customers more efficiently and cost-ef-

fectively. As there will no longer be any geographical boundary constraints, our clients can make cross-district land searches without having to visit different Land Registries in different districts. Most convenient of all, for those clients subscribing to our Direct Access Services, without even leaving their offices, they can have on-line access to land register information in respect of any properties anywhere in the territory;

they can also use their own personal computers to place orders for land records and receive electronic images of the same via the DAS network.

As far as the Land Registry is concerned, 1997 will undoubtedly be a very eventful and prosperous year.



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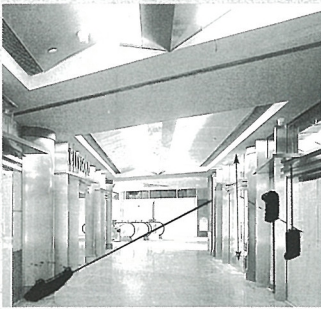
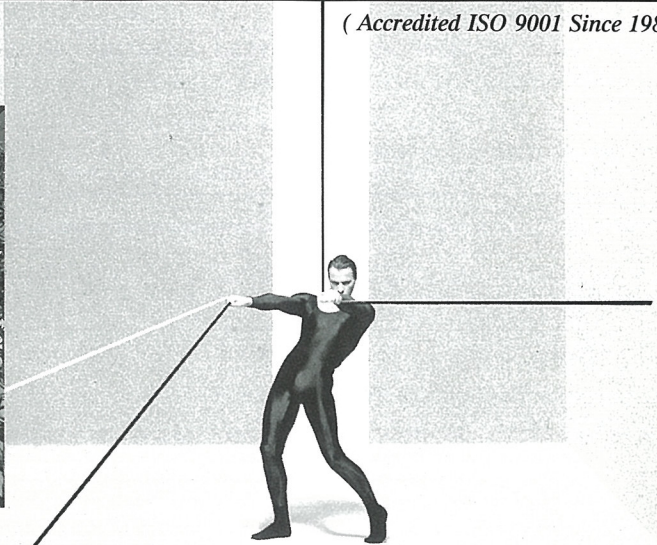
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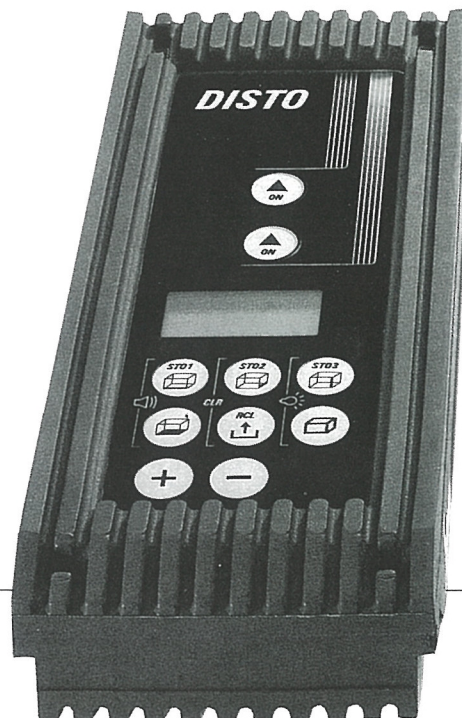
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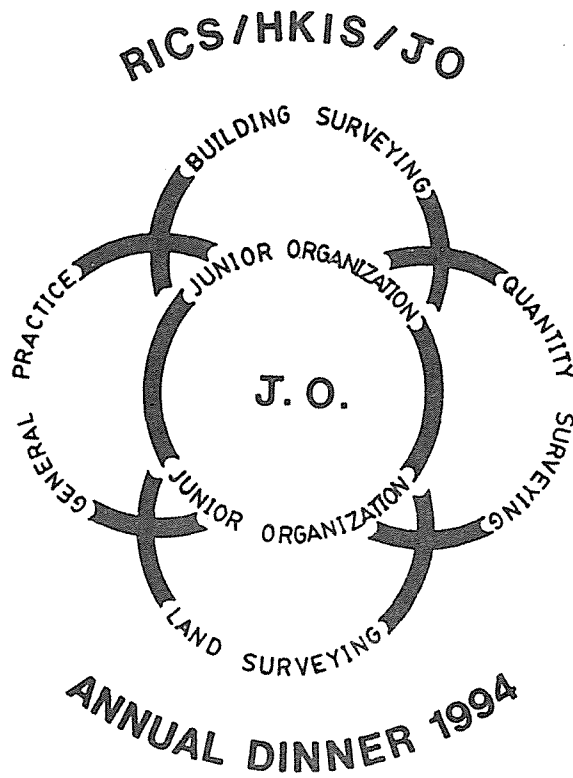
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Date : 12th December 1994 (Monday)
 Time : 6:00 - 10:30 p.m.
 Venue : Hong Kong Cricket Club
 137 Wong Nai Chung Gap Road, Hong Kong
 (Carpark is available)
 Fee : HK\$280.00 per head (Buffet Dinner)
 Feature Speech : Image and Fashion for Professionals
 Guest Speaker : Mr. William Tang

The No. of seats is limited to 100 and reservation will be allocated on "FIRST COME FIRST-SERVE" basis upon the receipt of cheque. Please complete the following reservation form and return with a cheque to Mr. Barry Y.T. Lai (Contractors & Controls) c/o Provisional Airport Authority, 25/F Central Plaza, Harbour Road, Wan Chai, Hong Kong on or before 2nd December, 1994 (Friday). For enquires, please contact Mr. Barry Lai at 8247180.

Reservation Form

I/we would like to reserve _____ seats for the Junior Organisation Annual Dinner 94 held on 12th December, 1994 (Monday) and enclose a cheque (No. _____) in the amount of _____.

Name of Participant(s) : _____

Company : _____

Contact Tel., : _____ Fax : _____

*Please make all cheques payable to "RICS(HK) JO"