

Scaling New Heights

2003 was a roller-coaster year for property market as property prices dived, recovered and soared in a velocity we did not expect.

For me, I also had an exciting year in 2003. I was inspired to take up the role of Hon. Editor after reading Richard Branson's biography at the beginning of the year. Richard Branson, a well know entrepreneur, created his business empire starting from doing a school magazine when he was a student.

I am proud to serve and deliver one of the most visible services for HKIS members. In many ways, we in the Editorial Board had succeeded in delivering our promises; we gave the Surveyors Times a modern new look; we enriched the content and more importantly, we drew in more contributions from our members.

I wish to give my heartfelt gratitude to everyone who has contributed to this success story. In particular, I wish to thank our growing army of young contributors:

Danny Cheung, Jenny Chung, Kenny Chan (JO member), Claudia Chan, Vincent Lim, Kelvin Ng, Emily Ling, Simon Poon, Jean Cheng, Jeffrey Wong, Stephen Li, Sheldon Ip, Paul Wong....

They are remarkable young people. They not only cheered us up by telling stories of some of the finest men and women in our profession, they also covered events for which they also served as organisers. This year we organised a slew of

exciting events: APC Replay, Lunch n' Learn Event, Leading in Turbulent Times, JO Forums, Guangzhou Exchange, Summer Rhapsody Series, Band of Surveyors Roundtable, Extraordinary Halloween Party....

I wish to thank our regular feature writers:

John Molloy, Brian Rawling, James Longbottom, Dr. Conrad Tang, Ronald Cheung and Cliff Tse.

Lack of contributions from members is a chronic problem faced by every Hon. Editor. Each month we struggled to fill space and find contributors. I can't imagine what the Surveyors Times would look like if we did not have such loyal support from them.

I wish to thank my boss and mentor Mr. C K Lau. I would not have this smooth sail in my post had it not been for his support and encouragement.

I also wish to thank our readers, and I hope one day you will also come forward to share your views in your institute's publication, like Victor Ng, Lawrence Pang, Eric Ma, Kenny Chan, Lesly Lam, K H Yu, Carol Tam and Alan Lo had done in this year.

I will now pass the baton to next year's Hon. Editor. I am sure under the new leadership the Surveyors Times will scale to new heights.

Jim Yip
Hon. Editor
jimyip@hkis.org.hk

In Retrospect - My Year as President of the Hong Kong Institute of Surveyors Council Year 2002/2003



Kenneth CHAN Jor Kin
President

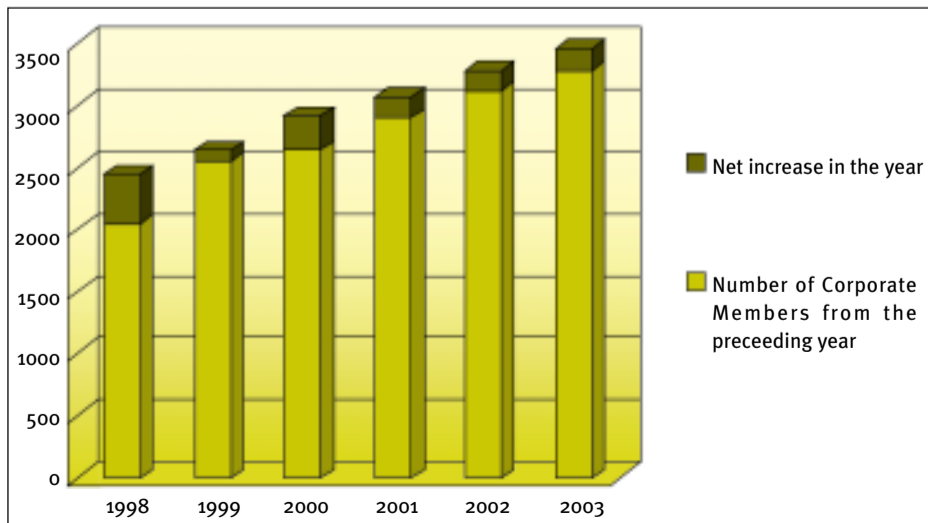
About the same time last year, I delivered my inauguration speech 'Informing and Involving the Total Membership in Professional Excellence - The Way Forward for the Surveying Profession in Hong Kong' in this same venue. I made a number of propositions and it is now time to recapitulate what has been achieved.

Celebration Time

The 20th Anniversary celebration was officially launched during the Surveyors Annual Dinner on 14 November 2003. The 20th Anniversary Logo signifies our colourful past and depicts a dynamic future ahead of us. A series of celebrations will enrich and brighten up our days ahead. I hope all of you will actively organize and participate in these meaningful events.

Membership Growth

By the end of November 2003, the total membership of the Institute stood just over 6,014 (5,930 in 2002) including 3,464 (3,280 in 2002) corporate members and 2,550 (2,650 in 2002) probationers and students. There was a net increase of 187 corporate members. The growth rate was slightly higher than those of the two preceding years which were 155 and 172 respectively. Here below is the trend of membership growth recorded in the last six years.



During the year, a number of corporate members resigned from the Institute. Some had retired and not practicing and others moved out of Hong Kong. We hope with the new subscription fee concession for non-practicing members and members residing out of Hong Kong they could be kept in our membership roll for some time.

Members' service

Our monthly publication was revamped with a new look and format which was welcome



Press Conference on 1 January 2003 with the Honourable P C Lau and Henry Chan

by most of our members. The contents had been enriched and contribution from members greatly increased. These made the **Surveyors Times** much more readable. The launch of our web site had also made communication with members easier and much more timely.

In the year, the General Council approved the issue of CPD/ PQSL Coupons worth HK\$500.00 to all members of the Institute.

New Disciplines Structure - Professional Development

The General Council endorsed in principle a new disciplines structure that allowed the profession to respond more promptly to

changes in requirements and expectation of services offered by surveyors.

The reconstituted Property and Facility Management Committee had proposed and General Council approved the formation of the 'Property and Facility Management Forum' following the amendment of the Constitution that allow the creation of Specialist Forums by the General Council.

Similarly, the General Council approved the formation of the 'Valuation Forum'. This was in response to market demand and the changing of the operation environment of professionals.

Relationship with the RICS

A number of meetings were held with the personnel responsible for education in RICS.



Press Conference - Sewage system defects and Atypical Pneumonia

We got to understand better the new APC scheme being promulgated by RICS which was intended to be introduced in Hong Kong. Members have a number of concerns about the practicability of implementing the new scheme in Hong Kong and opined that the current HKIS APC could best serve the prevailing situation in Hong Kong although there were rooms for improvement of the current scheme.

Promotion of the Institute

An HKIS Corporate brochure was published for wide circulation. Divisional councils and members are encouraged to make use of this publication to promote the expertise of the surveying profession.



Press Briefing on e-Learning package on Professional Ethics



Picture with Mr. Yim Yi King creator of 'World of Ah Chung' (阿蟲世界)

Education and Membership

It was discouraging that some members were against the proposal for direct admission of prominent personnel and allied professionals to fellowship and membership of the Institute. I fully appreciate the reservation held by those members. The HKIS membership is a hard-earned qualification. However, we were only talking about admitting those who could add to the prominence of the profession.

The Institute was considering the recruitment of someone to oversee the professional development of members. This would further enhance the function of the newly created Board of Professional development.

Professional Ethics and Professionalism

The e-Learning package on the Internet sponsored by ICAC on Professional Ethics was launched on 9 May 2003. Members, especially young and student members could now utilize this initiative to appraise their understanding of integrity and learn more about the subject of professional ethics.

The writing competition on Professionalism and Professional Ethics announced in April 2003 received 17 entries from corporate members and students. The judges selected 3 top papers for award. The comments on the winner are: well expressed, experienced surveyor, real life experience, enlightening and intriguing for members, focused presentation, convincing content, strong belief in ethics, and words of encouragement to members. The title of the winning paper by Mr. Gordon ANDREASSEND was 'Integrity Integrates - The Marriage of Ethics and Professionalism'.

The Institute commissioned famous local artist Ah Chung (YIM Yi King) to use his calligraphic and artistic creativity to illustrate the nine core values of professionalism. The first picture on integrity was well received. The creative work for all the nine themes was completed and the pictures are being used for making souvenirs. In this respect, the Institute had ordered the printing of desktop calendars depicting the nine core values for distribution to members.

Networking with other Professional Institutions



Mr. John TSANG, Permanent Secretary for Commerce Industry and Information

Your presidents have been in regular contact with counterparts in the other professional institutions. This has been valuable for joint efforts and getting to know each other more. We met for discussion on issues affecting our professions and collaborated in a number of fronts in the local community. These contacts had led to mutual understanding and cooperation in many local initiatives.

Surveyors Learning Centre

Our General Council approved the leasing of an additional space on 8/F Jardine House. The newly leased area (Suite 810-815) would be fitted out mainly for lectures, conferences, seminars and meetings whilst the present meeting facility at Suite 801 would be turned into a members' gathering venue. It was envisaged that members would pay frequent visits to this venue for fellowship and informal gatherings.

Technical Membership

Members at the Extraordinary General Meeting on 7 October 2003 formally approved the



Exchange of souvenirs after the signing of reciprocity agreement with CIREA

inclusion of the technical grade of membership into the Constitution of the Institute. This was in line with the recommendation of the Construction Industry Review Committee in bringing technical/ middle management into the ambit of professional bodies for development and discipline.

Reciprocity Agreement

The Institute signed a reciprocity agreement with the China Institute of Real Estate Appraisers on 4 November 2003 in Shenzhen on the occasion of the Mainland's celebration of the establishment of the 'China Real Estate Appraisal Qualification System'. Our experienced General Practice surveyors would now be able to acquire the 'Registered Real Estate Appraiser' qualification by passing a supplemental test after receiving instructions on local law and practices. Furthermore, it was noting the conferment of award to twelve of our senior members including past presidents for their contribution to the real estate profession in the Mainland.

On 5 November 2003, we signed a reciprocity agreement with the New Zealand Property Institute for the recognition of our General Practice surveyors.

Conclusion

During the year, I had the opportunity of meeting many prominent people in the capacity of the president of the Institute. I hope I have brought along the goodwill of the Institute when I met with these people and that the image of the Institute was further enhanced. Our position and standing in



Opening Ceremony - Proper Maintenance makes Hygienic Homes Road Show

society and privileges enjoyed by the Institute were built up by our predecessors and each one of you over the exciting 19 years. We must continue to put in our effort to make the Institute more influential.

Before closing, I would like to thank members of the General Council for their support during my term of office. I must also thank Alexander LAM and K K CHIU for bringing the annual meeting of the International Valuation Standards Committee to Hong Kong and achieving reciprocity agreement with the China Institute of Real Estate Appraisers and New Zealand Property Institute. Words of appreciation are also owed to the Building Surveying Division for their hard work during and after the SARS epidemic. Many had appreciated the timely production of information pamphlets on drainage maintenance and members appearance on live broadcast and delivering talks to educating the public. I wish the new incoming council every success in bringing the Institute to new highs.

Presented on 12 December 2003 at the HKIS AGM. 18



10th Anniversary of CIREA Qualification System and Real Estate Appraisal Conference

West Kowloon Cultural Development



Public Private Partnership

HKIS supports in principle the idea of engaging the private sector in financing, planning, building, operating and maintaining the Development. By inviting submissions from private-sector proponents, Government will benefit from innovations and expertise which may not be readily available from Government organizations.

However, this must be considered against the background of the not-so-successful projects involving the private-sector where there was widespread perception - we underscore the word perception - that favouritism was given to developers during tender negotiation (the Cyberport) and at project implementation stage (the Ma Wan Park). A robust business plan is therefore absolutely essential. It must be carefully drawn up and explained to the industry and the general public.

The Project

The Development being planned is a mega scale project occupying 40 ha. of land. The following facilities are to be provided:

- a theatre complex with three theatres of a total seating capacity of 3,200
- an enclosed performance venue seating at least 10,000 people
- a museum cluster with four museums of 75,000 square metres
- an art exhibition centre of 10,000 square

metres

- a water amphitheatre for water and light shows
- at least 4 piazza areas
- an automated people mover
- a fire station complex
- a pier
- commercial, residential and hotel blocks
- a canopy covering the great majority of the arts and cultural facilities.

The proponent will structure a development plan, which maximizes its return through a proper mix of the arts and cultural facilities with the commercial, residential and hotel provisions. For the Development as a whole to be financially viable, it is expected that a good portion of the revenue will be through sales and rental of commercial and residential properties.

Procurement Options

There are many options, and combinations of options, in procurement of facilities. A decision on the most suitable option is made relative to Government's attitudes towards commitment, risk and control. The key considerations are summarized in the following table:-

<u>Option A</u>	Government (similar to New Town Development)
<u>Option B</u>	Authority (similar to MTR)
<u>Option C</u>	Private Agents, implementation by packages
<u>Option D</u>	Single Private Agent
<u>Option E</u>	Single Private Agent, implementation in phases

From the Government's perspective, the pros and cons of the various options are summarized below:

Option	Initial Financing	Planning/ Design	Land and Legal	Implementation	Change in Market	Change in Demand for Facilities
A (Govt)	High Commitment	High Control	Low Risk	High Control;	High Risk	Low Risk
B (Authority)	High Commitment	Low Control	Low Risk	High Control;	High Risk	Low Risk
C (Private, Multiple Packages)	Low Commitment	Low Control	High Risk	Low Control; Medium Risk	Medium Risk	Medium Risk
D (Private, Single Package)	Low Commitment	Low Control	Medium Risk	Low Control; High Risk	Low Risk	High Risk
E (Private, Single Package, in Phases)	Low Commitment	Low Control	Medium Risk	Low Control; Medium Risk	Low Risk	Medium Risk

The Good Practice

Nothing comes free. That Government appears to benefit from transferring risks to the project proponent does not change the simple fact that taxpayers will eventually pick up the bill. The procurement strategies must therefore be so devised to ensure the following:

- Government's baseline on project deliverables is clearly defined and communicated to the proponents.
- A systematic approach is adopted to ascertain Government's affordability.
- The proponents' submissions are structured to permit evaluation against clear and distinct criteria, including whole-life costing.
- Risks should be borne by the party that is best able to manage them. They should be distributed between Government and the proponents so as to maximize value-for-money to the public.
- Government will not be held hostage to any post-contract changes, be they initiated by Government or the project proponent.

The Challenge

For a project as big and as complicated as the West Kowloon Cultural Development, the greatest challenge we face is the need on the one hand to establish Government's baselines for the purpose of inviting proposals and permitting evaluation of these proposals on an equal footing, and on the other hand to allow flexibility to encourage innovation and to cope with the changes that are bound to arise over the long lifespan of the project. The success of the Development depends on how these two fundamental but somewhat contradicting criteria are properly balanced.

Project Programme and Financial Arrangement

Key dates governing delivery of the core arts and cultural facilities are stipulated in the Invitation for Proposals. These facilities are expected to be operational from 2010 to 2012, i.e. within 4 to 6 years after commencement of the project in 2006. While it is acknowledged that by asking the proponent to deliver these core facilities upfront, Government will have a better control over the quality of the whole Development, we are concerned that the initial capital outlay will be very substantial. The investment risks will be so high that the Development may not be attractive to a proponent unless a high profit margin is allowed. We would propose the adoption of a more flexible approach of allowing "progressive financing" of those less profitable facilities by the more profitable facilities, thereby minimizing the risk exposure of the project proponent.

Land Matters

The proposed procedural land grant, i.e. Basic Terms Offer, followed by a Short Term Tenancy and then followed by Land Grant conditions, is undesirable. Too much risk seems to be placed on the proponent who will commit a huge investment based on very loose terms. In the case of a dispute, the Government will not be in a strong bargaining position, in view of the money

and effort already committed, the long time for resolving the dispute, and the undesirable consequences of canceling the project agreement. For the same reason, the Building Covenant Clause seems superfluous.

For allocation of undivided shares for the core cultural and arts facilities, common areas, GIC, etc. the ownership right is unsatisfactory. It is distinct if different land uses are subdivided into lot sections. Allocation of maintenance responsibility will be complex because of the different standards and services involved.


The Single Package Arrangement

The Government holds the view that the single package is the best approach to an "integrated development". Balanced against this, as we have mentioned above, are the perception of favouritism to a large developer; the need for proper allocation of risks; the need to cope with the changes that are bound to arise over the project lifespan; and the likelihood of Government being held hostage to post-contract changes. From both contractual and technical points of view, we consider that the Development can be, and should be, broken down into a series of packages without necessarily compromising its integrated design and operation.

The Government appears to be committing too much, too early through the single package arrangement. What will happen if several years into the project agreement there is a genuine need for Government to revise or re-appropriate the facilities, as a result of changes in the sociological, economical, or demographical environment?

HKIS Professional Expertise

We welcome the opportunity to comment on the procurement strategies for such a landmark project, which will have a huge impact on the future of the HKSAR. Although our comments are focused around broad principles, we firmly believe that they are the fundamentals governing the success or otherwise of the Development. As the project is only in its inception phase, we believe all our comments, if acceptable to the Government, can be easily incorporated into the subsequent phases of procurement.

HKIS are always at the Government's disposal to provide professional advice, as well as to tap local and international talent / expertise on a wide range of subjects, such as risk management, affordability benchmarking, financial appraisal, output specification, tender assessment, due diligence audit, facilities management, life-cycle costing, etc. 

LSD Annual General Meeting 2003



The Annual General Meeting of Land Surveying Division was held on Tuesday, 18 November 2003. Over 50 members attended the meeting.

The following officers were elected:-

Officers	Name
Chairman	Mr. LAM Li Wah
Vice-Chairman	Mr. SIU Wai Ching
Hon Secretary	Ms Rina TSOI
Hon Treasurer	Mr. NG Wai Tak, Victor

There was also presented the Certificate of Award for Excellence to Miss CHAN Hin Yee, the best student as recommended by the Hong Kong Polytechnic University.

Please visit the website www.hkis.org.hk/hkis/html_lsd/index.jsp for a detailed report.



LSD Council Officers 2002/03
(from left to right:
Hon. Secretary, Mr. CHAU Ming, Marvin,
Vice-Chairman, Mr. SIU Wai Ching,
Chairman, Mr. LAM Li Wah and
Hon. Treasurer, Mr. NG Wai Tak, Victor)



Miss CHAN Hin Yee,
Award for Excellence 2003
(from left to right:
LSD Chairman, Mr. LAM Li Wah and
Miss CHAN Hin Yee)

Member suspended

CHENG Chak Ho, MHKIS 2764, GP

The Disciplinary Board decided in its report dated 30 September 2003 the following charges against Mr. Cheng were established:

1. Mr. Cheng had deliberately or otherwise failed to disclose information relating to the listing on the GEM Board of a company to the senior management of his employing company;
2. Mr. Cheng should not have accepted or should not have accepted on behalf of his employing company instruction in connection with the listing of a company given that Mr. Cheng had interest or shareholding in that company and/ or Mr. Cheng was a director of that company at all material time.

In accordance with Part VI of the Bye-Laws, the General Council at its meeting on 20 November 2003, having duly considered the decision made by the Disciplinary Board determined that Mr. Cheng Chak Ho, MHKIS 2764, GP had conducted himself in a manner unbecoming a member of the Institute, contravening the Standard of Conduct and exercised its disciplinary power under rule 2.1.3 to suspend Mr. Cheng's membership of the Hong Kong Institute of Surveyors for a period of two years, effective from 25 November 2003.

Alex Wong
Hon. Secretary
25 November 2003

Land Surveying Division - *Annual Dinner 2003*

Definitely a Humdinger Event in Our Annuals



Reported by Lesly LAM

The LSD Annual Dinner 2003 on 17 October was a special one. It was certainly the biggest we had held so far. We should begin by congratulating the members of the Organising Committee, for arranging the event. They did an extraordinary job of it all. Many thanks to all sponsors and to the M.C. and the lucky draw organisers for making this event a success!

The occasion, as was befitting, was graced again by the presence of the LegCo member from our functional constituency, Hon. P C Lau and the Vice President of FIG, Mr. T N Wong. Leading them was none other than our beloved Chairman, Mr. LAM Li Wah.

Our Chairman started the fun with his opening speech. He nostalgically mentioned our activities in the past year, e.g. CPD events, international conferences, FIG Working Week in Paris, LSD Golf Tournament 2003, etc., and noted that members' active participation had been encouraging. After his spectacular talk, he presented souvenirs to the four sponsors of this dinner including Autodesk, Intergraph, Leica, and Horizon.

A sumptuous buffet was then served at the Grand Ballroom of Harbour Plaza Hong Kong. Some 80 people got together to enjoy an

absolutely fabulous evening. All enjoyed the free flow of food and especially the gourmet wine, which helped digest the delicious meal.

Another speech followed, with Hon. P C Lau highlighting the prospects of Hong Kong's professional surveyors working in the Mainland China, the issues about Land Boundaries in the New Territories, etc. Together with the appetizing food on the table, participants were enthusiastic with his talk. He had provided the incentives and substance for a fun filled evening enjoyed by all.

As is the tradition at our annual dinners, the occasion also honoured those council members for their contributions in various ways. They then proposed a toast and we all drank to our good health and fortune.

All participants enjoyed the dinner especially in the final lucky draw section. There were about twenty prizes and some were sponsored by the guests and private companies.

This annual dinner was definitely a great time had by all. It had served to bond members together. Special thanks were given to Mr. Joseph Wong, and Ms. Katherine Wong, the M.C. at the day's celebrations, and in particular their handling of the fun at the dinner. Similarly commended was Ms. Rina Tsoi, whose indefatigable efforts contributed much to the success of this our milestone event. The evening concluded at around 11:00 p.m. with much chatter, fun and laughter. We thank you for your support and sincerely hope to see you next year. ☺



Opening Speech by our Chairman Mr. L W Lam



Souvenirs presented to the sponsors



Speech by Hon. P C Lau



Synergy among participants & FIG Vice President, Mr. T N Wong



Toast to good health by LSD Council Members 2003

Measures to *Boost Urban Renewal*



Private initiative in urban redevelopment projects has declined notably in recent years. While the fall in the property market is the main reason, there have been others, including the difficulties in site assembly, the inflexible land premium policy and the high cost of obtaining vacant possession of domestic properties.

How can we revive private-sector participation in urban renewal, which could help ease the funding burden on the public in this continuing and important exercise?

The Hong Kong Institute of Surveyors (HKIS) believes the relaxation of certain legislation and the premium policies is necessary to lure back private interests.

The land-assembly process has been a major hurdle in urban renewal. The Land (Compulsory Sale for Redevelopment) Ordinance was

enacted in 1998 to help private owners tackle sticky issues in land assembly, such as absentee owners, title problems and last-owner syndrome, in the hope of expediting urban redevelopment.

Under the ordinance, private owners who have more than 90 per cent of undivided shares in a lot can apply to the Lands Tribunal for an order to sell the lot for redevelopment.

However, after more than five years of operation and with not more than eight cases reportedly filed to the Lands Tribunal, the HKIS believes it is high time to review the ordinance.

The Garley building saga highlighted how the existing ownership application limit has hindered the effectiveness of the ordinance. After it was badly damaged by fire in 1996, the abandoned building became an eyesore. Despite strong redevelopment merit and keen interest from the majority owner (who owned about 68 per cent of the undivided share before the fire), the land-assembly process was traumatic.

The building was eventually sold by court order under the ordinance last month to the majority owner(s) of the building.

Tracking the land assembly trail, we find that by

the end of 2000 the majority owners had amassed an undivided share ownership close to 88.5 per cent. The ownership rose to more than 90 per cent last year when the application was made.

Before the building was sold, the minority ownership that had not been acquired rested on only one outstanding unit, representing less than 1 per cent of the shares.

As the ordinance has given the Chief Executive in Council a right to lower the application ownership limit ratio to not less than 80 per cent, we recommend that the government should initiate public discussion on whether the ratio should be reduced to a more appropriate level.

At a lower ratio the Garley building could have been demolished several years earlier.

Another class of projects that would benefit from a lower percentage requirement for an application to be made would be the six-storey buildings commonly found in urban areas.

Very often, a missing owner in one of these typical six-owner buildings could be enough to sabotage the redevelopment approved by the rest of the owners.


Lease modification and land exchange has been

one important process in revitalising the urban landscape. A land premium has to be paid for modification and land exchange.

But little or no financial reward is given to the owners/developers who are pivotal in creating such marriage value or premium realisation for the Government.

The HKIS believes it is desirable for the government to specify types of projects and/or areas deemed socially desirable for redevelopment and adopt a more innovative premium assessment policy to facilitate urban renewal. This would fuel urban renewal and the government would receive land premiums that would otherwise not be available at all. Before 1973, the Government charged only half of the land premium assessed in modification cases.

The HKIS in principle supports the Landlord and Tenant (Consolidation) Bill 2003. The bill's proposal to remove security of tenure for domestic premises, if enacted, would improve the financial viability of certain redevelopment projects.

The time taken to obtain vacant possession would be reduced, in addition to the saving in costs and effort in the application process. 

Lease Modification - with an Option to Delay



In Hong Kong, the Government has been exercising control of land development primarily through terms of the Government lease by which interest or development right of land is granted.

In the property market in Hong Kong, however, a purchaser of the land interest may be prepared to pay not only the intrinsic value of the land, but also a hope value in expectation of obtaining a modification of the terms of the lease to permit a change of use or more intensive development.

Certainly, in such event under the prevailing land system in Hong Kong, the purchaser, now being the landowner, is still required to pay a premium to the Government to reflect the enhanced value which shall be calculated by reference to the difference in development potential originally permitted by the Government lease and that newly permitted by lease modification.

By paying more than the intrinsic value of the land, the purchaser is accepting the risk of change of user or modification. In this regard, the purchaser is analogous to buying the right to an option: if the market turns out in its favor or the premium to be charged by the Government is right (in market sense), he will exercise the option, proceed with the modification and pay the premium to the Government; otherwise, the purchaser will not commit further.

But unlike purchasing an option in the finance market, the landowner has obtained the exclusive right to the modification and even part of the premium paid for this option above the intrinsic value of the land will not be forfeited. That is, in respect of the latter, there is no time to expiration and the life of the option survives indefinitely.

This is comparable to an American option¹ save that the premium payable to Government, i.e. the remainder of option premium, would only be charged when the modification proceeds.

Interestingly, in the options market, the price of an American option can be split into two components:

- (1) The proceeds realizable from exercising the option immediately; and
- (2) Additional value the option may have if exercise is postponed.

The first component is exactly comparable to the premium for modification chargeable by Government. It appears therefore that it is rightful for the Government to charge the landowner for the full premium for allowing the modification of the lease or the Government is allowing a windfall profit to the landowner.

This practice of charging full premium is also consistent with the established policy of Government in auctioning land to the full market value in the open market. In fact, in acquiring the land in the first place and then applying for the modification in subsequence, the landowner is likened to buying this option right in a closed market. He may not be satisfied with the amount of premium set by the Government but he is at liberty to put forward market evidence to support a reasonable assessment.

In any event, he is not required to bid for the enhanced development potential in the open market. Most important of all, he enjoys the right of the option to postpone and he is also at liberty to re-sell his exclusive right in the open market.

There might be fear that by charging the full premium for allowing the proposed modification, the Government may be stultifying development especially in times of doldrums. Firstly, if this rationale is sound, it would be equally correct to ask the Government not to dispose of new development land in auctions to the highest bidder. Secondly, even under the current land policy of Government charging full premium for modification, developers have always been speculating on the Government charging a premium which might lag behind or for any reasons, not fully reflect the value of the modification.

If the Government agrees explicitly to such a concession, it would be fueling this speculation, leading the developers to pay more speculative amounts to the existing landowners at the expense of the public coffers; the Government is just surrendering part of the premium to the private landowners.

If this speculation is rife, it would also create fictitious "market prices" that might distort the mechanism of the market and damage its function as information provider.

As recently observed by the Court of Final Appeal in *Director of Lands v. Yin Shuen Enterprises Limited and Nam Chun Investment Company Limited*, FACV Nos. 2 and 3 of 2002, "The Government's right to charge the full value of the modification has not been and could not be challenged.

Its policy is informed by the philosophy, which formerly underlay the ownership of land in Hong Kong while it remained a Crown Colony. Land in Hong Kong was regarded as belonging to the

Crown, which parted with its ownership only for the duration of the lease and for the user specified in the lease. Subject thereto, it remained the undisposed property of the Crown. In granting a modification of the user covenants in the lease, therefore, the Crown in effect made a further disposal of the land for which it was entitled to charge full value."

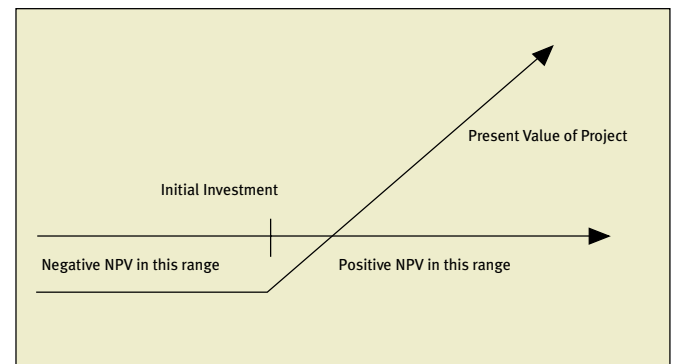
Whereas the second component of the premium comprises also the additional value for the right to postpone or delay, the Government's practice of charging full premium for modification of the terms of the lease does not appear as critical as it seems to affect developers' decision on not seeking modification.

Certainly, a project or redevelopment would be taken if the returns on the project, discounted for its risk, yield a positive net present value after cost or up-front investment.

Thus, in a perfect market, purchasers would pay a price which precisely reflects the prospect of obtaining a modification of the terms of the Government lease and the costs of obtaining it, including the payment of the premium; and the Government would charge a premium which exactly reflects the additional value which would be entrusted to the land as a result of the modification.

But we all know that the market is not perfect; in particular, the future market prices of the completed development are not certain. The present value of the cash flow on the project is volatile and can change over time. Even a project with a negative net present value today may have a positive net value in the future. Thus, the option to postpone the project or redevelopment is most valuable.

The option to delay a project is exercised when the developer owning the land decides to



proceed with the modification. In making the calculation, the cost of the initial investment may be taken as the exercise price of the option.²

By the nature of the option pricing model developed by Fischer Black, Robert Merton and Myron Scholes, however, the value of the option is largely derived from the variance in cash flows; the higher the variance (which might be related to uncertainty), the higher the value of the project delay option.

In this regard, therefore, the developers' decision to proceed with modification for redevelopment appears more likely to be governed by their various simulations of the future cash flow rather than by the premium itself so long as the latter is fairly assessed.

For instance, in recent months when the property market outlook improved, developers were more enthusiastic to proceed with the modification request. At the time of writing, the developer who had acquired the former site of Heung To Middle School in Diamond Hill as early as in 1998 decided to commit some \$150 million in premium for modification although he intimated there would not be too much profit in anticipation.

Note:

¹ This name is not particularly related to America but is used in the finance world to distinguish from the other type of options by the feature that an American option can be exercised by the holder at any time prior to expiration.

² Aswath Damodaran, *Investment Valuation: Tools and Techniques for Determining the Value of Any Asset*, 2nd Ed. New York: John Wiley & Sons, 2002, pp. 777-776.

A Comparison Table between Financial Option and Investment /Real Option

Variable	Financial Option	Investment Project/Real Option
K	Exercise Price	Cost to acquire the asset
S	Stock Price	Present value of future cash flow
t	Time to expiration	Length of time option is viable
σ^2	Variance of stock returns	Riskiness of the asset, variance of the best and worst case scenario
r	Risk-free rate of return	Risk-free rate of return

Source: Marion A. Brach, *Real Options in Practice*, John Wiley & Sons, 2002

Cheques Offered in Full and Final Settlement



John B MOLLOY

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The negotiation of a final account for a construction project can be a time consuming and complicated affair. The contractor will claim various sums, the employer will, in response, offer lower sums and generally after much negotiation the matter will be resolved.

Where settlement is not being reached or where the employer is keen on resolving matters promptly it is not uncommon for the employer (or contractor negotiating with a sub-contractor) to attempt to dispose of the matter by sending the other party a cheque stating that it is ‘in full and final settlement of all matters in respect of the contract’.

Contractors and sub-contractors traditionally handle such an approach by firstly putting the money in the bank and, secondly, going back to argue for more money at a later stage. But this is a dangerous course of action and leads to many cases coming before the courts where it is alleged that the contractor or sub-contractor is estopped from pursuing entitlement to further sums because they have confirmed their agreement to settlement of the sum offer by putting the cheque into the bank.

Whilst the courts do not always accept such estoppel arguments this area of the law seems a rich source of disputes.

Perhaps in an effort to confirm and clarify the law in this area a report has recently been published in England in the Technology and Construction Law Reports of the case of **Stour Valley Builders v Stuart** [2003] TCLR 8. This case was decided by the Court of Appeal in December 1992 but was not at that time reported.

The case clearly sets out the position of the courts regarding the status of cheques sent in full and final settlement and its publication now

appears an attempt to make more people more aware of the principles concerned.

The facts of the case are typical for a dispute of this nature. Stour Valley Builders entered into a contract with Mr. and Mrs. Stuart to carry out works at their house. At the final account stage the contractor submitted a bill for £10,204 for works carried out. Mr. Stuart queried a number of items that were charged as extras. The contractor sent a detailed reply accepting some minor errors in the first bill and revised their claim to £10,163. Mr. Stuart responded with an equally detailed reply in which he disputed approximately £3,000 of the extras claimed and stated that he was willing to settle the account for the sum of £8,471. The last paragraph of his letter read:

“I have no desire to take this further, however I will simply not cough up on demand to charges which are unreasonable. I am prepared to settle this matter now. I am enclosing a cheque in full and final settlement of all charges for £8,471. This figure includes all charges, compensation, savings and does not leave any retention outstanding.”

The contractor received the cheque and immediately paid it into their account. Two days after the cheque had cleared the contractor, on the advice of their lawyers, telephoned Mr. Stuart stating that they did not accept that the cheque was in full and final settlement but that they had paid the cheque into their bank because they needed the money.

The contractor then commenced proceedings for £1,692 plus interest which was the difference between £10,163 and £8,471. The employer, Mr. Stuart, defended the action on the basis that the contractor had accepted the cheque in full and final settlement.

The matter was initially decided in the contractor’s favour. The court held that the contractor’s conduct had not caused the employer to think that the money was taken in satisfaction of the claim.

The employer duly appealed. In deciding the appeal Lloyd LJ carried out a very detailed analysis of the law in this area, and his decision

and reasoning gives clear guidance on the way in which the courts decide these matters.

The employer argued in the appeal that the judge in the first case had erred in law and that on the facts the judge was bound to find that the cheque had been accepted in full and final settlement. The employer raised this argument on the basis of a rule of law that had derived from the courts in the United States where it had been held that “as a matter of law, the use or retention of the cheque by the creditors with knowledge of the condition, is regarded as an assent to it” (Williston on Contracts 3rd Edition). In the United States therefore it was not even necessary to bank the cheque, simply holding it would be regarded as agreement to the settlement.

However, Lloyd LJ made it clear that the rule in the United States did not apply in England, and he affirmed that the principle established in the leading case of **Day v McLea** [1899] was still good law.

In **Day v McLea** the court established the principle that where a party tenders a cheque in full and final settlement of a claim, the cashing or retention of the cheque by the other party is not conclusive evidence of acceptance in full and final settlement. Bowen LJ said:

“Accord and satisfaction imply an agreement to take the money in satisfaction of the claim in respect of which it is sent. If accord is a question of agreement, there must be either two minds agreeing or one of the two persons acting in such a way as to induce the other to think that the money is taken in satisfaction of the claim.”

Following these principles Lloyd LJ held that whilst cashing a cheque (or even retaining it) is strong evidence of acceptance, especially if not accompanied by an immediate rejection of the offer, neither action is conclusive and the key test is that set out in the second sentence of the quotation from Bowen LJ set out above, i.e. whether the contractor’s conduct caused the employer to think that the money had been taken in satisfaction of the claim.

In the circumstances of the present case he was satisfied that Stour Valley Builders’ conduct in cashing the cheque for £8,471 did not cause Mr.

& Mrs. Stuart to think that the money had been accepted in final settlement, and therefore the appeal was dismissed.

This principle was applied again recently in the case of **Andrew Bracken and Ann Trickett v Graham Billingham** TCC 10 June 2003, where in the middle of adjudication proceedings Bracken wrote to Billingham proposing that the parties should drop the whole case providing Billingham paid a figure of £6,000. He concluded that life was short and they all needed to move on and not have these issues hanging over their heads.

Ten days later, solicitors acting on behalf of Billingham wrote to confirm that their client was not willing to pay a sum of £6,000 but that they were instructed to forward immediately a cheque for £5,000 on the strict understanding that that sum was offered in full and final settlement of all issues. The letter noted:

“The payment is tendered as an offer of settlement which will be deemed to have been accepted by you and therefore be contractually binding if it is presented to your bank and cleared for payment”.

Two weeks later Bracken presented the cheque for payment and it was subsequently cleared two days later.

The court held that on the facts of this particular case it was clear that the offer had been made in full and final settlement at the time that the cheque was sent. He was also clear that the presentation of that cheque to the bank would amount to an acceptance of the offer that would give rise to an agreement. Bracken’s conduct had thus caused Billingham to believe that he had accepted the cheque in full and final payment.

These cases clearly indicate the dangers of cashing cheques sent ‘in full and final settlement’. Contractors and sub-contractors receiving such cheques should make it entirely clear in writing that their acceptance of the cheque is an acceptance of only a part of the payment to which they maintain they are due. ☐

Success in mediation -

The importance of being prepared for the mediation



Patrick O'Neill
Brian E Rawling & Associates

Mediation is becoming a prime method for resolving construction disputes in Hong Kong. Indeed, the Hong Kong Institute of Surveyors and the Hong Kong Institute of Architects have recently decided to set up a joint panel of mediators and will be running a course in March 2004 to train members of both Institutes for the panel.

Mediation has the merits of being cheaper and faster than arbitration and/or litigation. However, in order to take full advantage of the mediation process it is vital that a party is sufficiently prepared for the mediation itself if that party is to have any chance of securing the best possible settlement for itself.

Mediation is not supposed to be an adversarial contest in the same way that litigation or arbitration is capable of producing a potentially clear winner and a potentially obvious loser. Rather, mediation attempts to achieve a “win-win” scenario with each party, to a greater or lesser extent, designated a winner. However, whilst the ultimate aim is for both parties to be fully satisfied with the settlement agreement reached during the mediation hearing, the fact remains that if a party is not fully prepared for the mediation, it may inadvertently put itself into a position of having to settle for something other than the best deal that it could otherwise have achieved.

Inadequate preparation and a failure to fully understand the implications of the issues could result in the senior decision makers arriving at the wrong conclusions whereby the mediation is unsuccessful and arbitration or litigation ensues. Therefore, to achieve a “win-win” situation, preparation and a thorough understanding of the issues is vital.

You will recall, no doubt, George Orwell’s satirical novel regarding the Russian revolution, *Animal Farm*, in which the rebelling animals drew up their seven commandments, the most

important of which was “*all animals are equal*” and to which was eventually added “*but some animals are more equal than others*” (we will ignore the first commandment which read “*Whatever goes upon two legs is an enemy*”).

Well, a similar philosophy applies to a successful mediation. Having reached a settlement, both parties can be considered as winners in their own right since, theoretically, neither would have been prepared to accept a settlement that was not in its best interests. However, not all mediation winners may be equal and by paying particular attention to the preparation phase prior to the actual mediation hearing, some winners can end up being considerably more equal than others. The party that does the best, the one that maximizes its settlement to the full, is in all likelihood, the party that is best prepared for the mediation and this situation is in complete control of the parties.

Know your position inside out

Being adequately prepared for the mediation demands that a party should know all it can about its position as well as the points of view that can be expected to be put forward by the opposing party. Pre-hearing conferences and working sessions are useful arenas in which to test the strengths and weaknesses of a party’s position, and careful consideration should be given to the participants who should be involved in such meetings. The employer (or the contractor as the case may be), their legal representatives, quantum and programming consultants and site staff can all have a valuable contribution to make in ensuring that the party’s position is fully understood. This helps to formulate what will hopefully be the best strategy to adopt during the mediation hearing.

Playing devil’s advocate will soon identify whether a party is being realistic about the strengths of its position. Knowing the position inside out and, in particular, identifying the particular strengths in relation to each of the issues in dispute is vital since one of the keys to success in mediation is to assist the mediator to fully understand the issues in dispute and, in particular, the party’s position in its discussions with the other party.

During the mediation hearing, the presentations will be primarily aimed across the table at the other party, but it is equally important that the right impression is made on the mediator. Whilst the mediator is a neutral influence without allegiance to either party, he or she is also a thoughtful person who cannot help but be receptive to a well prepared, well delivered argument. If, by thoroughly knowing your position and by exposing the weaknesses in the other party’s position, you can convince the mediator that your position has merits, and through lack of advanced preparation the other party is not as prepared as perhaps they should be, then you may have won over a powerful ally who can champion the merits of your position during the caucus sessions. The voice of the mediator may have a significant impact on lowering the other party’s expectations.

As part of the need to deliver a well prepared position paper it is particularly advantageous to have prepared, in advance, presentation material that can be shown instantaneously to both the mediator and to the other party in order to further explain or prove points as the needs arise. In particular, relevant correspondence (suitably highlighted), marked up drawings, coloured presentation charts, annotated photographs and the like should all be prepared in advance in order that they can be instantly called upon to embellish a particular point or to help neutralise a point being put forward by the other party. Such materials can also become an invaluable aid to understanding for those persons participating in the mediation hearing but who may not have been involved in the actual construction of the works and who may not be as familiar with the background to the dispute - e.g. the mediator and, perhaps, even the other party’s decision makers.

Validate the other party’s position

Equally important to a thorough understanding of one’s own position is the need to validate the position advanced by the other party. A party should seek to know all it can about the position being put forward by the other party and the potential weaknesses inherent in that position which could be focused upon during the mediation.

A party will often, deliberately, attempt to create a negative atmosphere with the issue of its position paper prior to the mediation hearing and effectively setting the tone of its position. It is important to realise that such a stance is often an extreme view and does not reflect that behind the facade there is undoubtedly a realization that the party accepts that it owes the other party something, albeit somewhat less than the other party is seeking. Playing devil’s advocate with the other party’s position paper will assist in identifying what the other party’s true position is more likely to be than the disguise presented in the position paper.

The internal pre-mediation working sessions are again ideal venues for identifying the strengths and weaknesses in the other party’s position and for drawing up a proposed strategy of how best to deal with each of the points raised, whether good or bad, in the lead-up to the mediation hearing.

Do your numbers in advance

Construction mediations inevitably involve disputes about money. The disputes may be related to the valuations of variations, claims for additional payments, or a liability for damages. Irrespective of how the amounts are individually made up, the disputes are invariably about the amount of money. Inevitably then, the mediator will, at some point in time during the caucusing, ask what a party really needs to reach a resolution on an individual issue, or on the dispute as a whole, i.e. how many dollars will it take to resolve the dispute. Lack of preparation will become obvious and the risk of having to settle for something other than the best deal, which could otherwise have been achieved, will increase if there are not almost immediate answers to such questions. This aspect of a party’s position should be prepared with careful thought and well in advance of the mediation.

For example, looking at the mediation from the position of an employer (in a dispute with a contractor), it is not difficult to have analysed and prepared, in advance of the mediation

hearing, liability matrices that identify the financial consequences of the various possible settlement permutations which can be immediately referred to during the mediation caucus sessions as required.

If an employer were to acknowledge that the contractor was entitled to, say, 50% of the extensions of time claimed, what would that mean as a consequential entitlement to additional payment in respect of prolongation costs? How would such an award of time affect the liquidated damages position? Based on the payments made to date, how much more money would need to be put on the table?

How then would these figures increase with a corresponding 75%, or 80%, or even full awards of outstanding extensions of time? Such analyses should be prepared in advance of the mediation hearing, since they are time-consuming to prepare and unless they are prepared with clear and careful forethought there is always the danger that mistakes might be made if the arithmetic is left to the last minute or that, due to lack of time, a party simply cannot prepare as good an assessment as the matter deserves.

Similar matrices can be prepared by a contractor clearly identifying the financial entitlements for the various possible settlement permutations.

There may well be many twists and turns during the mediation and possibly even the odd surprise from the other party. Consequently, there could be many permutations of the possible outcome in what could be numerous issues in dispute. Being able to clearly identify the financial outcome of varying settlement permutations is an invaluable aid during the caucus sessions and can be continually fine tuned as the mediation hearing progresses and as the relative strengths and weaknesses of the respective positions become clearer. The matrices should help to ensure that a party is not put in the position of having to unnecessarily agree to settle for an amount which is perhaps too high, or too low, given the degree of success that the party has achieved during the mediation.

BATNA and WATNA

It is also important that a party knows in

advance what its best alternative to a negotiated agreement (BATNA) is and, also, the worst alternative to a negotiated agreement (WATNA), so that the party can decide what the parameters of the eventual negotiated settlement should be. A party cannot meaningfully negotiate in the mediation caucus sessions unless it knows its best and worst alternatives to a negotiated settlement. Remember, if the mediation fails to achieve a settlement then the parties will have to become involved in expensive arbitration or litigation proceedings.

Clearly define the roles and responsibilities of your team

A party should ensure in advance of the mediation hearing that all the members of its mediation team clearly understand what their respective roles and responsibilities will be during the mediation hearing. Lawyers, claims consultants, planning and programming experts, representatives from site, etc., should all be clear on the purpose of their participation in the mediation and be clear on how their individual roles are to complement the strategy adopted by the team as a whole. All team participants should be reminded to have in constant contemplation the party's overall strategy and what it is that the party wants to achieve and how, as a team, it is jointly going to achieve it.

The structure of the mediation hearing traditionally enables the parties to take up fixed positions in being able to present their views of the disputes with minimal interruption from the other party prior to retiring to the caucus sessions. This structure permits each of the parties a considerable degree of latitude as to how to present their position and careful consideration should be given as to who is to take the lead role in terms of presentation and how the other members of the team are to complement that lead role.

If someone is not comfortable in articulating the technical or legal aspects of a point then such tasks should be left to the team members who may feel more at ease with the language of the construction industry or the operation of a specific clause in the contract, or of a particular technical or financial point. The matter of precisely who does the talking during the


mediation presentation sessions should be addressed in advance of the mediation hearing and be considered on a case by case basis.

Client preparation is an all-important factor in mediation. It is vitally important, whether you are an employer or a contractor, that the senior decision makers are taken through the evaluation of that party's position in advance of the mediation hearing in order to avoid any embarrassing surprises.

In the case of an employer, proper client preparation, including a detailed analysis of the client's possible exposure to costs on each and every issue in dispute helps to negate the chances of a surprise and the unfortunate scenario of finding out about issues for the first time during the mediation hearing or, even worse, not having secured sufficient funds to meet its potential exposure.

In the case of a contractor seeking additional payment, insufficient client preparation may result in the contractor accepting a figure that is perhaps not the best that could otherwise have been obtained although, of course, there is always the option of refusing a settlement if the figures are not to one's satisfaction.

At the end of the day, preparation in advance is the all-important key to success in any construction mediation.

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HKIS and HKIA Joint Panel of Mediators

The HKIS and HKIA will be holding a CPD event to introduce mediation and the joint panel of mediators early next year. The mediator training course to enlist on the joint panel will be held on 12-14 and 19-22 March 2004 - see attached flyer for further details.

Are Foreclosed Properties Waning?



On 11 November, the Hong Kong Monetary Authority released favourable information. 99,805 bank mortgages were in negative equity on 30 September, 5.6% less than the 105,697 at the end of June. The amount of these loans totalled HK\$155 billion, or 29% of all bank mortgages, compared with HK\$165 billion three months earlier.

Chart 1 below shows the ratio of mortgage loan delinquent for more than 3 months.

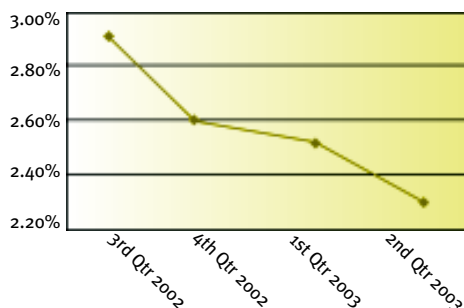


Chart 1 The Percentage of Negative Equity Residential Mortgage Loans Delinquent for More Than Three Months

The default ratio is declining. The stock/supply of foreclosed properties has been falling in consecutive months for the first time in 2003, to only 2,518 at the end of October, the lowest record in 2003. Chart 2 below shows a projection of stock from 2003 to 2005.

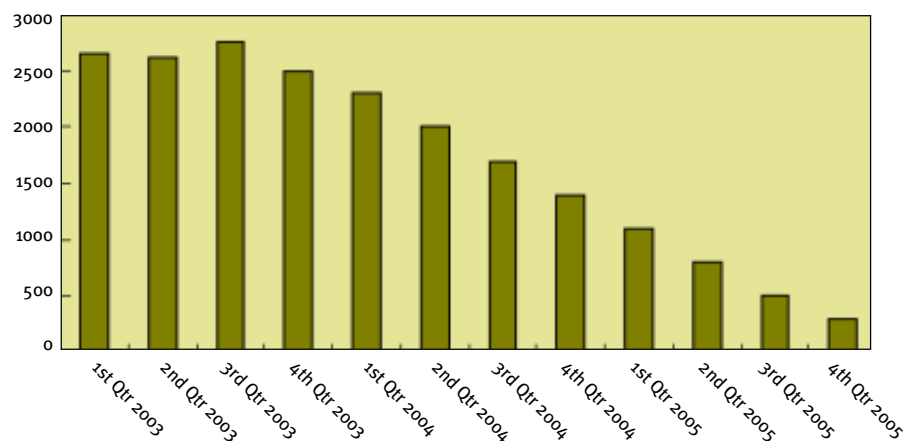


Chart 2 The Stock of Foreclosed Properties from 2003 to 2005

The stock, hopefully, will reduce to an insignificant level in two years' time.

Another contributing factor is the price category into which the foreclosed properties mostly fall. As evidenced by Chart 3 below, most belongs to the middle to lower end of the market. This category of foreclosed properties is likely to be more easily absorbed by the market, as they are more affordable by the general public.

In fact, in November 2003, 24% of the largest 50 residential estates have been spared with foreclosed property sales. They include:

Hong Kong Island: Lei King Wan, Kornhill, Nam Fung Sun Chuen, Queen's Terrace, Aberdeen Centre and City Garden

Kowloon: Laguna Verde and Telford Gardens

New Territories: Garden Rivera, Tierra Verde, Villa Esplanada and Fanling Centre

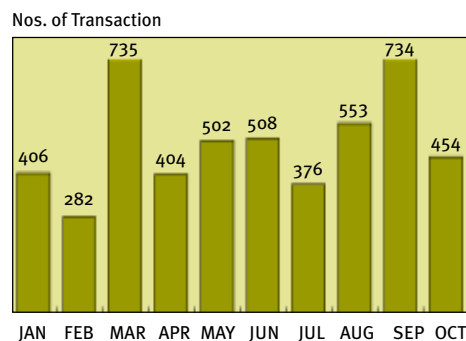


Chart 4 Monthly Transactions of Foreclosed Property in 2003

Only four estates i.e. Mei Foo Sun Tsuen, Kingswood Villa, Discovery Bay and Seacrest Villa have more than 10 foreclosed properties currently listed for sale.

On the other hand, the improved market outlook has encouraged mortgagees to sell the foreclosed at a higher price, or at least not to sell at a deep discount. This resulted in a considerable drop in the number of transactions in October, to 454 from 734 in September. The number of transactions in the first 10 months in 2003 is shown in Chart 4 below.

Following the upturn in market confidence, mortgagees have modified their tactics in disposing of the foreclosed properties. In addition, as the amount owed on the negative equity loans has been reduced by HK\$10 billion, the banks can afford to take a stronger stance in negotiation tactic when disposing of the foreclosed properties. Recent approaches by the banks include:

- i) Regularly re-valuate the foreclosed properties and update/raise their prices.
- ii) Ensure that the sale price of the foreclosed properties is in line with the prevailing market level.
- iii) Wait until the highest bid they can get.
- iv) Prefer sale at the open market value by private treaty to force sale value at auction.
- v) Increase commission payable to estate agents to encourage more sales bids.
- vi) Appoint the most energetic and dynamic

estate agents as sole agents to dispose of the properties at the highest price.

- vii) Adopt higher media exposure by placing more newspaper advertisements to attract more prospective buyers.

Another trend is that banks/mortgagees turn to leasing, instead of sale, of the foreclosed properties, for the following obvious reasons:

- i) The market is recovering with prospects of higher prices in future. Deferring sale could achieve higher sale prices.
- ii) The rental income could cover monthly holding costs of those foreclosed properties such as management fees, government rent, rates, insurance and rental collection charges etc.
- iii) The higher the selling prices the lower the loss in recovering mortgage defaults.

With the market showing signs of recovery, it is expected that transactions of foreclosed properties would average 400 to 500 per month. At this rate the number of foreclosed properties could be reduced to less than 300 in two years' time. ☺

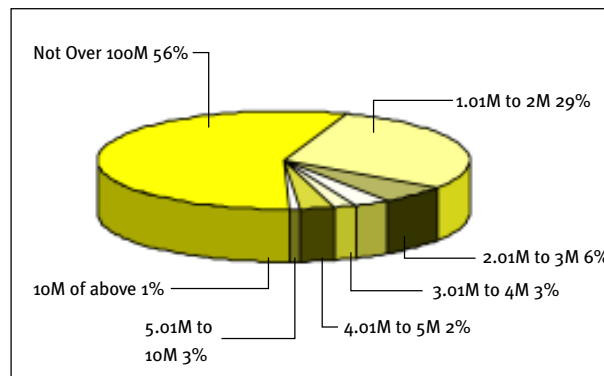
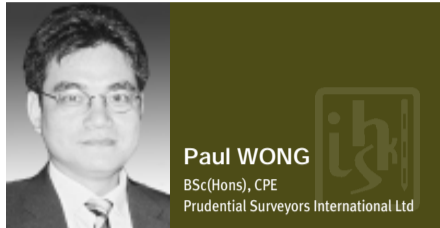


Chart 3 Foreclosed Properties for Sale by Value

Will *Victoria Harbour* become *Victoria River*??



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(1) **Society for Protection of the Harbour Ltd v Town Planning Board** [2003] HKCFI 606

(2) **Society for Protection of the Harbour Ltd v Chief Executive in Council and others** [2003] HKCFI 1037

Introduction

The protection of Victoria Harbour has hit the headlines in the last few months and this protecting the harbour saga between the Society for Protection of the Harbour Ltd (the Society) and the Government is still going on by the time this article is published.

The Society won in **Society for Protection of the**

Harbour Ltd v Town Planning Board which concerns the Wan Chai Reclamation Phase II, but lost in **Society for Protection of the Harbour Ltd v Chief Executive in Council and others** which concerns the Central Reclamation Phase III.

Background

A feasibility study - Central and Wan Chai Reclamation Feasibility Study, commissioned by the Government recommended the reclamation of some 108 hectares along the waterfront from Central to Causeway Bay, to provide land for essential infrastructure projects which include Central-Wan Chai Bypass, the Island Eastern Corridor Link, the MTR North Hong Kong Island line and to improve the existing waterfront by making it more pedestrian-friendly and easily accessible by the public.

The Reclamation is proposed to be carried out in five phases. Three of the five phases had already been completed and two are pending.

A summary of the five phases appears below:

Phase	Status
(1) Central Reclamation Phase 1 for accommodating the Hong Kong Station of the Airport Railway	Completed in June 1998
(2) Central Reclamation Phase II, reclaiming the previous Tamar Basin	Completed in September 1997
(3) Wan Chai Reclamation Phase I, for the extension of the Hong Kong Convention & Exhibition Centre	Completed in July 1997
(4) Central Reclamation Phase III	Just started
(5) Wan Chai Reclamation Phase II	Pending



政府現正檢討灣仔發展計劃第II期的填海範圍
RECLAMATION EXTENT FOR WAN CHAI DEVELOPMENT PHASE II IS UNDER REVIEW

Fig 1. Reclamation from Central to Causeway Bay

Society for Protection of the Harbour Ltd v Town Planning Board

Facts

The Town Planning Board (the Board) prepared a plan for the fifth phase which proposed 26 hectares of land to be reclaimed from the harbour along the Wan Chai Harbour front for, broadly speaking, 2 major purposes:

- (1) To provide land for infrastructure works including the Central-Wan Chai Bypass, the Island Eastern Corridor Link; and
- (2) To improve the existing waterfront including the provision of a Harbour Park and a Waterfront Promenade.

After receiving some objections, the Board ultimately made some amendments to the Plan, but rejected those of the Society for the Protection of the Harbour. The Society then sought judicial review of the Board's decisions to reject its objections and refusal to amend the plan accordingly, on the grounds that it misinterpreted and misapplied the **Protection of the Harbour Ordinance (Cap. 351)**.

Held

The court ruled in favour of the applicant and quashed the decisions of the Board on the grounds that the Board's decisions were erroneous in law, being in contravention of **section 3 of the Protection of Harbour Ordinance (the Ordinance)**.

Section 3 of the Protection of Harbour Ordinance provides that:

- (1) The harbour is to be protected and preserved as a special public asset and a natural heritage of Hong Kong people, and for that purpose there shall be a presumption against reclamation in the harbour.
- (2) All public officers and public bodies shall have regard to the principle stated in subsection (1) for guidance in the exercise of any powers vested in them.

The court held that the duty to protect and preserve the harbour and the presumption against reclamation should form the starting point in the Board's decision making process.

In order to rebut the presumption against reclamation, the purpose and extent of each proposed reclamation ought to be individually assessed and subject to three tests:

1. Compelling overriding and present need;
2. No viable alternative; and
3. Minimum impairment to the Harbour.

Society for Protection of the Harbour Ltd v Chief Executive in Council and others

Facts

The Central Reclamation Plan, approved by the Chief Executive-in-Council last year, authorised the reclamation of approximately 20 hectares of land along Central's waterfront.

The reclaimed land will provide for the Central-Wanchai Bypass (a tunnel to divert traffic around Central) and for a waterfront promenade. Reclamation work under the Central Reclamation Plan commenced in about August 2003.

The Society for the Protection of the Harbour, as part of its judicial review application, also applied for interim relief. In substance, the Society sought orders that all work under the Central Reclamation Plan connected to the reclamation of the harbour be stopped.

The Applicant contended that allowing the reclamation work to proceed, even on an interim basis, would result in irreparable and irreversible damage to the harbour. Essentially, the reclamation work would advance to a stage where, for all practical purposes, it would become a fait accompli.

The Respondents contended that given that the reclamation works, within the next four to five months, would only advance to a stage consisting of the removal of polluted silt, the work if necessary could be scaled back or undone.

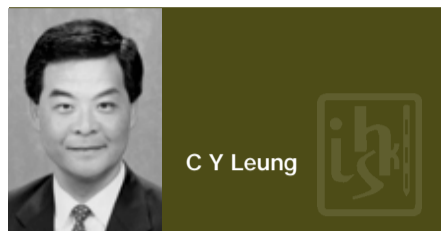
The Respondents also contended that if the HK\$3,790 million reclamation works were stopped now, material delay would be caused to the Central-Wanchai Bypass. This delay would result in contractual claims running into hundreds of millions of dollars and would outweigh the financial losses that may have to be incurred if, at a later stage, the reclamation work has to be scaled back or removed entirely.

Held

On the basis that the reclamation work done in the next four or five months could, if necessary, be undone and that the ecological damage to the already degraded waters would be minimal, the Court held that the balance of convenience in the wider public interest favoured that reclamation work should continue.

Concentrating On What We Do Best

Building National Professional Practices



Compared to other economies, Hong Kong has little natural resources. The most and the best we have is human resource. Diligence and adaptability of the Hong Kong people, who always take on both the opportunities and challenges in the twist and turns of history, have given Hong Kong its world status.

About 50,000 residents in Hong Kong are qualified by the 10 professional bodies represented by the Hong Kong Coalition of Professional Services. Together with members who are at the various stages of obtaining qualifications and those providing technical support, the size of the total work force in the professional sector in Hong Kong is in the hundreds of thousands.

Hong Kong professions offer not only expertise of individual members. Most importantly, the professions here are managed to strict principles of conduct. The professions in Hong Kong also have a long history of participating in public affairs locally and very actively in professional matters in the international community.

At the practice level, again the strengths of Hong Kong professional practices lie not only in the skills and expertise of individual professional staff members, but also in the management of professional practices that puts clients' interest first and that ensures commercial viability and continuity in the long-term.

These are what we do best as Hong Kong professionals.

Why should Hong Kong as a Community Support the Export of Professional Services?

There is tremendous potential in the export of Hong Kong's professional services. In money terms, let us assume the following. First, our total export (and I shall define export later) of Hong Kong professional services is equivalent to the output of 10% of the 50,000 professionals in Hong Kong, i.e. 5,000 people. Secondly, each professional, supported by technical and clerical staff, earns a fee of HK\$1 million a year. This will provide Hong Kong with an income of HK\$5 billion. HK\$5 billion is not a huge figure. However, this amount has no import component, apart from pens and paper, and goes nearly entirely into Hong Kong pockets. If the value addedness of the assembling activities in the manufacturing industries in

Hong Kong is 10% of the product value, HK\$5 billion of professional fees is equivalent to HK\$50 billion worth of export of manufactured goods.

How do We Export Professional Services?

Export can be achieved by one, Hong Kong professional practices providing services outside of Hong Kong, two, Hong Kong professionals taking up employment overseas and three, by attracting overseas users to come to Hong Kong to seek professional advice and services.

Which is our Export Market?

Without doubt the Mainland. The history of Hong Kong professionals working on the Mainland is much longer than is generally realized. At the very early stage of economic reforms some 25 years ago, the services of Hong Kong professionals were sought, albeit pro bono. The qualifications, scope of services and expertise of Hong Kong professionals are well known to users in both the public and private sectors. Much of the technical terminologies are common between Hong Kong and the Mainland. Indeed, many of the government policies, laws and rules and regulations on the Mainland have incorporated advice from Hong Kong. They are therefore most familiar to Hong Kong professionals. In addition, between the Mainland and Hong Kong, there are geographical, cultural and language proximities.

What does the Future Look Like?

Let me share with you my personal experience. 25 years ago, I helped with the Town Planning of Shenzhen to change it from a small farming and fishing village into a modern city, with a population target of 300,000. 10 years ago, my company opened its Shanghai office, the first on the Mainland. There was no fee-paying work. All the 20 people we recruited were trainees. Now we have permanent presence in 30 cities on the Mainland, employing a total of 1,900 people. 3 years ago, sharing these experiences, the host of a radio phone-in program publicly criticized me for encouraging young people to look north. 10 months ago, when I spoke in this theatre at a Central Policy Unit seminar, CEPA was a dream, and would not have featured professional services. These events spell out clearly both the speed and the breadth of changes, which have been accelerating on the Mainland. The future has arrived much quicker than we thought. The window of opportunity will not be around forever. For many Hong Kong professional firms, this is the first, and possibly the only, opportunity to grow outside of Hong Kong.

Looking at the future from the point of view of the whole country, the full range of professional services will be needed to support the next phase of economic and social developments. I believe Hong Kong professional firms should be ambitious enough to plan to grow, organically or

otherwise, into national firms for their own benefits and for the benefits of the Country. I pay tribute to the Central and the SAR Governments for recognizing the importance of professional services, as they have done in the formulation of CEPA and in other ways. I also pay tribute to the SAR Government for recognizing that facilitating the export of professional services does not conflict with free market philosophy, much in the same way as all the work that Hong Kong Government have done to promote inbound tourism and the export of manufactured products. However, for a new export sector such as professional services, a great deal more has to be done between the professional bodies and all the relevant Government bureaux to realize the potential.

Looking at the future from Hong Kong's point of view. How can we move up the value chain from the very successful economic sectors that we have? Let me use shipping as an example. Hong Kong is a leading shipping centre in the world, defined in terms of the number of boxes that we load and unload at our container terminals. London is also a leading shipping centre in the world, without container boxes. London provides the shipping registration, brokerage, insurance, legal documentation and dispute resolution services. Between London and Hong Kong, who makes the higher economic gain? Not Hong Kong.

I am not belittling the importance of the port to Hong Kong. But economic development is about scaling new heights. Container lorry drivers in Hong Kong passing their lorries to their children when they retire is not scaling new heights. Building on the port activities that we have now, shipping and port related services, including related professional services, will benefit not just lawyers, accountants and other professionals, but the entire community as well.

Before I close, I would like to raise two matters regarding implementation in the promotion of Hong Kong professional services on the Mainland.

The first is in connection with the partnering of Hong Kong professional practices with their Mainland counterparts. The speed of growth of the Mainland markets is very fast. The size of the landmass is huge. The entire Mainland market will be open to overseas competitors in the next few years. All these mean that Hong Kong professional practices interested in the Mainland will have to grow their capacities at a speed much quicker than they can manage on their own, or they will miss this window of opportunity. One answer to this challenge is partnering Hong Kong practices with their counterparts in different parts of the Country. This could take the form of formal association, strategic alliance, exclusive or otherwise, merger, acquisition or joint venture. The range of

possibilities is quite large. The approach taken should suit the particular needs of the Hong Kong practice or the particular profession of the practice. Hong Kong professional bodies and indeed statutory bodies such as the Trade Development Council would do a great service to the professionals in Hong Kong and the community at large by facilitating the formation of these partner relationships.

The second issue is about the implementation of CEPA. CEPA is an agreement signed between the Central Government and the Hong Kong SAR Government. However, nearly all the applications will have to be lodged in the first instance with a local authority in the city in which the Hong Kong professional practice intends to operate. It is more likely than not those local authorities already had, before the entry into force of CEPA, requirements or restrictions that either contradict with or complicates the provisions of CEPA. There may also be different interpretations of the provisions of CEPA by different local or national authorities.

I would therefore propose that 3 months after the implementation of CEPA, the collective experience, positive or otherwise, of Hong Kong professional firms in the application of the provisions of CEPA be consolidated and analyzed for feedback to both the Hong Kong SAR and Central Governments so that any deviation from the letters or the spirit of CEPA could be tackled at its early stage of implementation.

There are not many opportunities by which a sector of Hong Kong's economy, that is largely domestic in nature, could expand beyond the borders of Hong Kong, and at the same time contribute to the social and economic development of the country. The next few years will provide a short window of opportunity for the professions in Hong Kong for the first and last time. To take the best advantage of this opportunity, the Hong Kong Government, the governing bodies and members of the professions must work hand-in-hand. The professionals and professional practices should be less risk-averse, more mobile and more forward-looking.

Presented on 10 November 2003 at The Hong Kong Management Association "Team Players in the Global Economy" 

Serena Lau, *Managing Director* of RHL Appraisal Ltd



By Jenny Chung



Serena Lau is the daughter of the former president of the Hong Kong Institute of Surveyors, Mr. Francis Lau. Like father, like daughter, she is a GP surveyor and runs a reputable surveying firm RHL Appraisal Ltd, which was founded by her father. In this interview she shares how young surveyors can kick-start their property careers in China.



How much has your career been influenced by your dad?

I got interested in property since I was a teenage girl. I went with my father to inspect property, agriculture land and development sites. I sometimes had to pick up property brochures from the sales office. It was then my favorite pastime that I did my own flat design on the brochure.

So it was natural for me to choose a property course when I went to university. Now, I am working in a property consultancy founded by my father. My younger sister Sandra is also a surveyor and works here as well.

Have you worked for other employers?

I did. After my graduation from the University of Technology, Sydney, I had a two-year training in the valuation team of Commonwealth Bank of Australia. I worked in its Sydney office.

How do you position your firm in this market where small players are getting increasingly marginalized?

The market is very tight, difficult for all players. But it is even more difficult for a medium-sized firm like us. A one-man consultancy normally works in a niche market where the big players tend to shy away. For us, we compete head-on with the large consultancies in many service areas. To compete, we have to deliver more customer-focused services and our operation has to be more flexible.



Our China business has been growing in recent years. We have a strong team in China with offices in Beijing, Shanghai and Shenzhen. We have built up an unrivalled record in the China property market since early 80s when the China property market opened up. In the early 90s, the Shenzhen government rezoned the Futian District as the city's future city centre. We handled the tender of the first ten land plots in this area. At about the same time we were the marketing agent for the Guangzhou government for the sale of the property development rights above Wong Sha Station, which was the first station development for sale above the underground rail in Guangzhou.

What is your advice to young surveyors who want to work in the China market?

If you are serious about job opportunities in China which I believe there are plenty of them, go to the

Mainland cities like Shanghai and Beijing, rent a flat for yourself, then knock on the doors of any potential employer and say you are happy with a pay close to the local technical trainee. You would likely find a job to get the valuable local experiences.

From the employer's point of view, Hong Kong graduates still have an advantage over local graduates, in particular on the language side, although this advantage is vanishing fast.

What is the most memorable moment in your life?

Taking the professional test of the China Institute of Real Estate Appraisers (CIREA) two years ago. The test is not particularly difficult as long as you study the textbook. However, because of my father's background and his good relationship with CIREA, people thought the test would just be a formality for me, which was not the case, and this had created some unnecessary pressure on me. I studied as hard as I could and luckily I passed the test in my first attempt.



The study had also given me the opportunity to find out more about the differences between China and Hong Kong professionals, in particular, the good things and bad things about us. Generally speaking, I think the professional standards of Hong Kong valuers in terms of due diligence works, ethics and dealing with clients are higher, but our China counterparts are catching up fast.

From Sustainable Development to West Kowloon Cultural District



Jim Yip, Hon. Editor

This is the last issue of the Write Stuff column. In this last column we examine a peculiar language called doublespeak whose usage has become pervasive in modern business.

The word doublespeak was coined in the early 1950s. It is often incorrectly attributed to George Orwell and his dystopian novel Nineteen Eighty-Four. The word actually never appears in that novel; Orwell did, however, coin **Newspeak**, **Oldspeak** and **doublethink**, and his novel made fashionable composite nouns with speak as the second element, which were previously unknown in English. It was therefore just a matter of time before someone came up with **doublespeak**.

While doublethink can be defined as the ability to hold at least two contradictory ideas in the mind without experiencing cognitive dissonance, doublespeak is the ability to speak or write two or more contradictory ideas without the speaker or writer being consciously aware of the contradiction.

Doublespeak is language which pretends to communicate but doesn't. It is language which makes the bad seem good, the negative seem positive, the unpleasant seem attractive, or at least tolerable. It is language which avoids, shifts, or denies responsibility. Language which is at variance with its real purported meaning. It is language which conceals or prevents thought.

Examples

- **shock and awe:** massive bombing
- **axis of evil:** countries to be attacked; Bush administration hitlist
- **freedom fighter:** armed political rebel (positive term)
- **downsize, rightsize, RIF (reduction in force):** fire employees
- **job flexibility:** lack of job security (where job security means an actual or implied promise of continued employment)
- **taxpayer:** citizen

In Doubts about Doublespeak, William Lutz categorises four kinds of doublespeak. The first kind is the euphemism, word or phrase to avoid a harsh or distasteful reality. Used to mislead or deceive, the euphemism becomes double speak. A second kind of doublespeak is jargon, the specialised language of a trade, profession or similar group such as doctors, lawyers, plumbers or car mechanics. A third kind of doublespeak is gobbledygook or bureaucratese¹. Such doublespeak is simply a matter of overwhelming the audience with words - the more the better.

Alan Greenspan, a polished practitioner of bureaucratese, once testified before a Senate committee that "it is a tricky problem to find the particular calibration in timing that would be appropriate to stem the acceleration in risk premium created by falling incomes without

Check out the following local examples:

Doublespeak words in property	
Negative take-up	surplus floor space
Non-performing loan	bad debt
Negative equity	property value < mortgage, or to be exact, representing an army of more than 100,000 unhappy owners
Home Starter Loan	a ticket to negative equity
Sustainable development	a more common term after the piling scandal
Outsourcing	finding an external contractor
Luxurious development	includes a 576 sq.ft. two bedroom flat in Tin Shui Wai
Public Private Partnership (PPP) Private Finance Initiative (PFI)	essentially a private project
Green features	more GFA exemptions
Decentralisation	outside Central and Admiralty location
Strata-title sale	individual units on sale
En-bloc sale	whole block sale
Open market value	market value
Cyberport	a real estate project in disguise
Western Kowloon Cultural District	a performing venue for real estate muscle
Surveyors Times	the most visible member service from the HKIS

much prematurely aborting the decline in the inflation-generated risk premium"

Consider another brutal example from his speech on technology: "The advent in recent decades of the synergies of the microprocessor, lasers and fiber optics has fostered a distinct quickening in the displacement of physical weight of outputs with concepts."

The fourth kind of doublespeak is inflated language, which is designed to make the ordinary seem extraordinary, to make everyday things seem impressive, to give an air of importance to people or situations, to make the simple seem complex.

My favorite doublespeak word is "one country, two systems", which perhaps was the most notable achievement of Tung Chee Hwa since he became Hong Kong's chief executive six years ago.


"Socialism with Chinese characteristics," is another famous doublespeak in Chinese politics.

It is used to appease political ideologues while advancing economic imperatives.

So what can you do about the doublespeak? Be vigilant. Don't merely accept it; question it. When an administrator asks for your "input," what are you being asked to offer? Your reaction? Your opinion? Your advice? Your approval? If you're unsure, ask. And before you write or say anything, think. Think about what you want to communicate, and think about the most precise, simple, clear way to express your thoughts. Think.

Send your comments to jimyip@hkis.org.hk

Note:

¹ "Bureaucratese," a linguistic patois with vocabulary all its own. Laden with acronyms and couched in evasive terminology and phraseology, bureaucratese is the language of insincerity according to Marti Smiley Childs and Jeff March in "Bureaucratese: The Language of Insincerity". 

Twin Ambitions - Mr. Kenneth Chan and Mr. Tony Tse



Interviewed by Sheldon IP

As members, our wish list for the HKIS is simple. We want to see the HKIS strong and flourishing. We want to receive a better service from the Institute. This month, we interview two presidents and share their ambitions and challenges in leading the HKIS to meet the members' quest.

Mr. Kenneth Chan, the HKIS President 2002 - 2003



Is it worth spending so much personal time in the HKIS affairs? In other words, what are the rewards for it?

The Institute's affairs have been in my mind all these years. The interest of the Institute is virtually part of my professional career. I take pride in being a member of the HKIS. A great profession. I have never stopped to think whether spending my time for the Institute is worthwhile or not. I just want to do something that can contribute to Institute and to see it grow from strength to strength. I am not really asking that I will be rewarded for what I have done. It is great to be able to meet so many people during my presidency. This engagement has opened up my horizons.

What are the proud achievements in your presidency?

It is teamwork. I am glad to see the successful amendment of the Constitution amending mechanism and subsequently the passing of the 28 resolutions. We can now accept technical members and have made CPD mandatory. The introduction of Specialist Forums paves the way for the restructuring of the Institute. The first of such forums will be the 'Property and Facility Management Forum' to replace the 'Property and Facility Management Committee'. The introduction of the Chinese core values of professionalism and subsequent efforts on professional ethics education and training will have a major impact on the Institute's public image.

Which areas do you think HKIS should be involved more in?

Research and development in real estate and surveying is the area that we have not spent much effort on in the past. We have earmarked some generous resources for the divisions to carry out research but little progress has been made. Another area of research is on public issues that could aid our members who have been acting as advisors to numerous government boards and

committees. We also need to support our members in the continuous improvement of the skill sets in the discharge of duties in the ever changing working environment and general public's and clients' aspirations.

I would also like to see that the Institute is pro-active in identifying job opportunities for young and mature members. One way to achieve this is to promote more vigorously the capabilities of professional surveyors in assisting clients. Thus, comes the idea of my proposed slogan for the Institute: SURVEYORS: THE VITAL PROFESSIONAL LINKS IN PROPERTY AND REAL ESTATE DEVELOPMENT EXCELLENCE.

How do you see HKIS in ten years' time?

The Institute has doubled its size of corporate membership in just 9 years. Sustained growth will only come about if more non-traditional/ non-conventional jobs are secured by surveyors at senior positions that lead to increasing job opportunities for newcomers. We have to crack into sectors that we think we surveyors are better trained for. It is inevitable that we have to move across the border. This is a great opportunity over there. Servicing our members working in the Mainland is another challenge.

How to motivate more members' participation in the HKIS affairs?

We cannot expect that everybody is interested in participating in the activities and engaging themselves in organizing activities. But we have to make opportunities available for those who are interested. It took me ten years since becoming a member of HKIS to begin being involved in the Institute's affairs. I came forward simply because someone cared to call me up and ask if I was interested. I came also because I felt that I could contribute in one way or another.



How do you lead your council when confronting diverse members' views?

Listening! One must allow everybody to air his or her views and at the end of the day some sort of compromise is inevitable. There is always the likelihood that there exists a reasonable solution to the issue.

What are the strengths and weaknesses of the HKIS?

We are a strong organization in terms of membership and financial resources. Our weakness is in popularity and recognition by the public. We are not as well known as other professions such as the lawyers. We also need to have a stronger and more professionally run administrative framework in our institute as the challenges we are facing are more complex than before.

How do you interpret the move of RICS reopening a local chapter here?

I believe the current move is part of RICS's globalization strategy. Whether the actual

implementation of this strategy is rightly or wrongly done is yet to be seen. I wish to comment on that purely from a perspective of a RICS member.

It is OK if it is only meant to bring in an international dimension to RICS and better serve its Hong Kong members as after all we all pay a hefty subscription to RICS. It would be quite a "premium" subscription if the only benefit to a member is being able to call oneself 'a chartered surveyor'.



Other moves such as introducing separate APC, accepting local personalities other than HKIS members as RICS members, accrediting local degree courses and trying to compete head to head with the HKIS in professional standing in Hong Kong could be seen as invasion of the rights of an fraternal local organization and if not handled well, could breed resentment.

There have been some voices expressing strongly against some of the moves by the RICS Hong Kong Chapter. As an RICS member, I am concerned with whether the resources for such globalization drive have been used effectively. The money must be spent for a good cause. Is it really necessary to spend our subscription money this way to keep us happy in retaining our RICS membership if the move has been seen as an unfriendly act? Has the Administration in London learnt from the lessons from its previous similar moves in Australia and elsewhere?



Kenneth CHAN's Profile

Education

1975	Higher Diploma in Surveying, Building Surveying (Hong Kong Polytechnic)
1977	Bachelor of Science, Building Surveying (Leicester Polytechnic, UK)

Professional qualifications

Fellow of the Hong Kong Institute of Surveyors
Fellow of the Royal Institution of Chartered Surveyors
Fellow of the Institute of Building Control (Merged with RICS)
Fellow of the Association of Building Engineers
Member of the Chartered Institute of Arbitrators
Associate of the Hong Kong Institute of Arbitrators
Fellow of the Hong Kong Institute of Facility Management
Certified Facility Manager, USA
Certified Facility Manager of Japan
Professional Facility Manager, HK
Member of the World Organization of Building Officials
Authorized Person (Surveyor), HK
Registered Professional Surveyor (Building Surveying), HK

Career

1977 - 1982	Building Surveyor, Buildings Ordinance Office
1982 - 1985	Building Surveyor, Mass Transit Railway Corporation
1985 - 1992	Director, Jones Lang Wootton Ltd.
1992 - 1998	Deputy General Manager, Glorious Sun Group
1998 - 1999	Managing Director, C Y Leung Project Services Limited
2000 - present	Managing Director, DTZ Debenham Tie Leung Project Services Ltd.

Public Services

1988 - 1989 and 1995 - 1996	Authorized Persons and Structural Engineers Registration Committee
1993 - 1996	Authorized Persons and Registered Structural Engineers Disciplinary Board Panel
1992 - 2001	Advisory Group on the Implementation of the Guesthouse and Hotel Accommodation Ordinance
1993 - 1995	Energy Efficiency Advisory Committee
1996 - 1997	Authorized Persons Registration Committee
1996 - 1997	Structural Engineers Registration Committee
1998 - 2001	Fire Safety Improvement Loan Scheme Advisory Committee
1999 - 2001	Chairman of Contractors Registration Committee
2000 - present	Member of the Authorized Persons/ Fire Services Department Liaison Group
2000 - 2004	Member of the Authorized Person and Registered Structural Engineer Committee
2001 - 2004	Member of the Building Sub-Committee of the Lands and Buildings Advisory Committee
12/2000 - 11/2003	Member of the Appeal Tribunal Panel, Section 45 of the Buildings Ordinance
10/2002 - present	Member of Working Group on Building Quality, Building Sub-Committee
11/2002 - present	Member of Steering Group on Draft Code of Practice on Barrier Free Access, BD
8/2003 - present	Member of the Home Purchase Allowance Appeals Committee Panel, HPLB

Public and Institute Services

1995 - 1999	Council Member of the Hong Kong Institute of Surveyors
1997 - 1999	Chairman of the Building Surveying Division of the Hong Kong Institute of Surveyors
1998 - 1999	Member of the Surveyors Registration Board
1999 - 2001	Council Member of the Hong Kong Institute of Facility Management
1999 - 2000	Honorary Editor of the Hong Kong Institute of Surveyors
2000 - 2003	Governor of the World Organization of Building Officials
2000 - 2001	Junior Vice President of the Hong Kong Institute of Surveyors
2000 - 2001	Vice Chairman of the Surveyors Registration Board
2001 - 2007	Member of Governing Council of the Royal Institution of Chartered Surveyors (Asia Territory)
2001 - 2003	Honorary Secretary of the Hong Kong Institute of Facility Management
2001 - 2002	Chairman of the Surveyors Registration Board
2001 - 2002	Senior Vice President of the Hong Kong Institute of Surveyors
2002 - present	Academic Secretary of the Academy of Building Surveying
2002 - present	Member, Quality Building Award Organizing Committee
2002 - 2003	President of the Hong Kong Institute of Surveyors
2003 - 2004	Vice Chairman of Professional Green Building Council
2003 - 2004	Chairman of Board of Public Affairs, Professional Green Building Council
2003 - present	Trustee of the Board of Trustees of IFMA Foundation
2003 - 2004	Vice President of the Hong Kong Institute of Facility Management

Mr. Tony Tse, the HKIS President for 2003 - 2004



How did you get involved in the HKIS affairs?

I was first involved in the General Practice Division as a council member in 1988 when I moved to the private sector after twelve years in the Lands Department. The motive was to expand my network and profile in the industry. I certainly found fulfillment in my council member's role.

I chaired the General Practice Division for four years until 2001 before serving as the Vice President and Senior Vice-President of the institute in the past two years.

What do you think are the market and clients' expectations for surveyor's services these days? Have they changed a lot compared with the situation twenty years ago?

Certainly, I have seen a lot of changes compared with the time when I started in this industry. In the old days, a person who could fill a simple enquiry in land matters, file a response letter or give a simple indication of property value was already regarded as a professional.

But in the current market, if we are only armed with these skills, we will not be able to survive. The evolution of market and client business has pushed changes for professional services deliveries. We need to go in depth and in quality to deliver a service to our client's satisfaction. We need to display in our work a higher standard of ethics not just to our clients but to the public at large.

What are the major weaknesses you see in the HKIS?

In terms of public recognition we still lag behind other professional institutes in property and construction field. The biggest hurdle is that we are not particularly good at marketing ourselves to the public. We are far too shy to talk about the benefits we can provide to clients. We are reticent of our achievements in managing projects from inception to completion. We may have been seen by others as an inward-looking institute where we have not acted fast enough to attract new talents into the profession.

Over the years we have seen some key government initiatives in property, from housing management, estate agent to real estate investment trusts, but have we done aggressively enough in responding to these issues which have major impacts on the profession?

Since the HKIS was established in 1984, there have been many changes in the market environment. Looking at our institute's development, I would always ask myself this question - have we lagged behind in responding to the market changes?

How do you think HKIS can address these?

One effective way is for our members to take an active role in public policy debate and discussion. Many of the policies fall in our professional ambit, which we can definitely have an important part to play. We need to provide our leading thoughts in shaping a more open and transparent market framework and influencing the policy-makers.

If we want to be truly seen as a market leader, we need to make sustainable actions and efforts in promoting best market practices and standards so that we can not only maintain and uphold our standard, but also provide a platform to encourage our members to deliver innovative services.

These are big challenges for the institute. The institute alone cannot achieve our missions and we need members' support. We call for more members' voluntary services and devotion in order to see a better future for the HKIS.

As you are now the new HKIS president, how are you going to change that?

We will have new resources to strengthen the institute's administrative support for members. We will upgrade the library services and data assembly so members can research and obtain up-dated market information here. We will set up a technical membership grade and we will actively promote and support this new division. The new technical membership will benefit us in several ways: it will expand our membership base, deepen our industry influence and underline our commitment to make HKIS the premier brand for professionals in property and construction. On the other hand, the market will

benefit from a higher service standard as more market practitioners will become our members and their conducts will be subject to the HKIS regulations and standards.

How do you lead when you are confronting a diverse view from your council members?


Three years ago when we began discussion with the China Institute of Real Estate Appraisers (CIREA), our valuers counterparts in the PRC, on the possibility of signing a reciprocity agreement between the two institutes, we met opposition from some members fearing that such move would threaten the competitiveness of Hong Kong valuers. We organized a member's forum to listen and exchange views about the proposal. We subsequently had a vote on that to obtain a mandate from members.

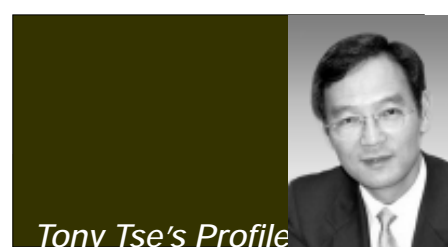
Last month, we finally signed the reciprocity agreement, for which we are the first one amongst local institutes signing with a Mainland professional institute.

To me, I am more excited with the achievement that we succeeded this with strong support from members. I think no matter how hard it is, we should try our best to reach consensus and win members' approval.

How do you see the reopening of the RICS (HK) chapter?

I don't see it as a threat or competition to the HKIS. In property and construction industry, there are many other professional institutes other than the HKIS. We in HKIS are doing what we can to raise our profile as the leading profession in this field. RICS and the HKIS are two leading surveying institutes. We come from a similar background and we are serving a similar batch of membership in Hong Kong. There are tremendous opportunities for us to work together and better use our resources to further elevate the surveying profession and set higher professional standards.

RICS has a good reputation in the international arena and they are renowned for their innovations and cutting - edge practices, which we can learn and embrace. However, property is a unique business and diversity is seen from market to market. A standard or practice, which works for one market, may not be suitable for the other. In embracing a new standard, we need to ensure that any rule we propose is in the best interests of the local market and our members and we must take the local conditions into consideration. 



Tony Tse's Profile

Education

1976 Higher Diploma in Surveying, the former Hong Kong Polytechnic

Professional Qualifications

Fellow of the Hong Kong Institute of Surveyors
Fellow of the Royal Institution of Chartered Surveyors

Career

1976 - 1988 Senior Estate Surveyor, Lands Department
1988 - 1990 Senior Valuation Manager, Hongkong Land
1990 - 1991 Director, Chesterton Petty
1991 - 2002 Director, Emperor Group
2002 - 2003 Director of Residential Property, Hongkong Land
2003 - present Director of Property and Land, Urban Renewal Authority

Public and Institute Services

1989 - 1990 Council Member of General Practice Division, the HKIS
1991 - 1992 Vice Chairman of General Practice Division, the HKIS
1997 - 2001 Chairman of General Practice Division, the HKIS
2001 - 2002 Junior Vice-President of the HKIS
2002 - 2003 Chairman of the Surveyors Registration Board
2002 - 2003 Senior Vice-President of the HKIS
1989 - 1990 Member of Real Estate Sub-Committee of the Land and Building Advisory Committee
2000 - 2003 Member of Election Committee, Architectural, Surveying and Planning
2001 - 2003 Member of Disciplinary Board Panel, the Land Survey Ordinance
1998 - 2002 Member of Real Estate Services Training Board, Vocational Training Council
2002 - 2004 Vice Chairman of Real Estate Services Training Board, Vocational Training Council
2000 - 2004 Member of Municipal Services Appeals Board
2003 - 2004 Hon Treasurer of Professional Green Building Council
2003 - 2004 Member of the Hong Kong Trade Development Council Infrastructure Development Advisory Committee
2002 - 2004 Member of Town Planning Board
1999 - 2005 Member of Land and Building Advisory Committee

SURVEYORS

ANNUAL DINNER 2003


The 2003 Annual Dinner of The Hong Kong Institute of Surveyors was held on 14 November 2003 at the Grand Hyatt Hong Kong. This year's Annual Dinner was particularly meaningful. It officially launched the 20th Anniversary celebration programme of the Institute. The Institute will have been established for twenty years by 26 April 2004.

The Institute was honoured to have invited the Honourable Henry Tang, the Financial Secretary of the Government of HKSAR as the Guest of Honour to start off the celebrations.

More than 600 guests and members filled the Grand Ballroom. After a speech by the President Mr Kenneth Chan and the Guest of Honour Hon. Henry Tang, there was an auction to raise funds for the HKIS Education Fund.

The auctioneer, Senior Vice President Mr. Tony Tse asked the guests and members to begin bidding for a drawing of the Nine Core Values of the Surveying Profession, which was autographed by Hon. Henry Tang. There began intense bidding for the drawing. The bidding drew to an exciting close with a bid of \$28,000 from Mr. YU Kam Hung.

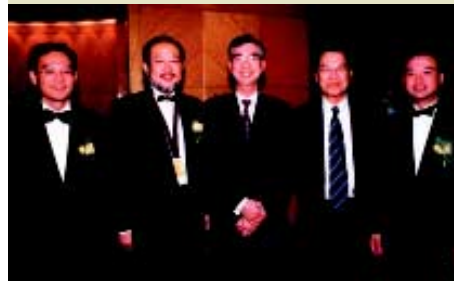
A table prize, lucky draw and bingo followed, with everyone having a chance to participate in the fun and games during the evening.

Many thanks to the organising committee and the 4 M.C.s for their support and contribution in making the event a most memorable and enjoyable one. 



The office bearers and M.C.s propose a toast to guests and members

(From left to right: Mr. Jeffrey Wong (M.C.), Mr. Alex Wong (Hon. Secretary), Mr. Tony Tse (Senior Vice President), Mr. Kenneth Chan (President), Mr. T T Cheung (Junior Vice President), Miss Amy Wong (M.C.), Miss Stacey Lau (M.C.) and Miss Fiona Chong (M.C.)



The President Mr. Kenneth Chan (2nd left), Senior Vice President Mr. Tony Tse (1st left) and Junior Vice President Mr. T T Cheung (1st right) with founding president of HKIS, Mr. F Y Kan (2nd right) and Director of Lands, Mr. Patrick Lau (centre)



Immediate Past President Mr. Hak Chan (4th left) and fellow members



President Mr. Kenneth Chan presenting a souvenir to Guest of Honour, the Hon. Henry Tang



Senior Vice President Mr. Tony Tse and guests



President Mr. Kenneth Chan with Guest of Honour, Hon. Henry Tang and Hon. C Y Leung and Hon. P C Lau



Hon. Secretary Mr. Alex Wong presenting a prize to one of the winners of the lucky draw



The winning bidder of the auction, Mr. YU Kam Hung, receiving a the drawing of the nine core values of the surveying profession from the President and Senior Vice President

Guests and members enjoying the evening

Unbeatable JO Party Spirit 2003



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Cliff Tse

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In this information-explosive era, we are bombarded with mountains of reading material, from reports, journals, emails to websites each day. Reading fast and effectively has become an indispensable skill in our daily life.

I would like to share some reading ideas from this month's recommendation - "How to Read a Book". Many people think reading is a natural skill and can be done without any particular techniques. But after reading this book, I realized that there are some powerful ways to improve the reading comprehension skill in order to enrich our minds.

This book is divided into four parts. Part one illustrates the first two levels of reading namely Elementary Reading and Inspectional Reading. A lot of details are then spent on Part two - the 3rd level of reading: Analytical Reading. Part three introduces various approaches of reading different types of reading material. Part four deals with the last level of reading - Syntopical Reading - the most complex and systematic type of reading of all.

When we were kids, we practiced elementary reading, which is a straightforward way of reading and its purpose is to understand the content. As we grew older, we used more of the next level of reading skill, i.e. Inspectional. Have you encountered problems in picking one from a number of books which touch on

the same topic? Without the systematic skimming or pre-reading, you may lose the direction of reading. The book provides some suggestions on the skimming skill such as, reading the book's title page and preface before going in depth. The table of contents is our reading navigator. It tells us what areas this book would cover. Then you turn the pages, dip here and there; and look for signs of the main contention.

One interesting section on reading speeds (contrary to speed reading) might be of interest to most. A good speed-reading skill is to skim contents that deserve a fast reading, and read slow when it requires more complete comprehension.

The third level of reading is going into Analytical Reading and the author elaborates in great details in this part. There are eight rules for readers to x-ray the book. Rule no. 1 is to classify the book according to the subject matter. Rule no. 2 is state what the whole book is about with the utmost brevity. Rule no. 3 is to enumerate its major parts in their order and relation, and outline these parts as you have outlined the whole. Rule no. 4 is to define the problem or problems the author is trying to solve. Then the next stage of analytical reading is to come to terms with the author. That is to say, the reader must find the important words in the author's message. Rule no. 6 is to find the most important sentences in a book and discover their propositions. Rule no. 7 is to locate or construct the basic arguments in the book. Finally, rule no. 8 is to find out what the author's solutions are.

When we exercise analytical reading, your reading purpose is to understand it and also to judge it critically. Your reading is not completed without giving a fair criticism. Other than saying with reasonable certainty that "I understand", "I agree", "I disagree", or "I

suspend judgment", it is important to avoid contentiousness - when you disagree, do so reasonably, and not disputatiously or contentiously. Respect the difference between knowledge and mere personal opinion, by giving reasons for any critical judgment you make.

The fourth level of reading: Syntopical Reading. Knowing that more than one book is relevant to a particular question is the first requirement in any project of syntopical reading. Five steps are suggested. Step 1 is to find the relevant passages - the aim is to find the passages in the book that are most useful to your needs. Step 2 is to bring the authors to terms, i.e. force an author to use your language, rather than using his. Step 3 is to get the question clear - the best way to do this is to frame a set of questions - that shed light on our problems, and to which each of our authors gives answers. Step 4 is to define the issues. It is always the issue between the authors who answer the question in one way and those who answer it in another opposing way. Step 5 is to analyze the discussion. A thorough analysis of the discussion of a problem may provide the groundwork for further productive work.

Several chapters in Part 3 introduce various techniques in reading various out-of-the-ordinary subjects such as practical books, imaginative literature, poems, history, science and mathematics, philosophy, and social science. In addition, the author provides a suggested reading list and various tests on the four levels of reading in the appendices.

This 426-page book was first published in 1940 and was revised in 1972. At the time of its first publication, channels of communication might be limited to papers and radio broadcast. But the rise of television and other medias like Internet have gradually taken over books as an access to information and to knowledge. However, reading is still one important tool to enrich our knowledge, and thus a good mastery of reading skills can enhance our work performance. This book provides some useful tips for us to reshape our reading skills. 📖