

# Land Issues in the Public Private Partnerships Project

*Thomas Leung  
Valuer, CB Richard Ellis*

*Yu Kam Hung  
MSc e-Commerce, FRICS,  
FHKIS, RPS(GP), FHIREA  
Executive Director of  
Valuation & Advisory Service,  
CB Richard Ellis*

PPPs include concessions and franchises, where a private sector partner takes on the responsibility for providing public services including planning, designing, financing, constructing, operating and maintaining specified services. In land development projects, PPP eases fiscal deficit of the Government. By adopting the PPP approach, the public sector can make use of the private sector's capital resources. Another reason for an organization in the public sector to form a PPP is to mitigate risk. It is interesting to study the land issues in the Public Private Partnerships Project.

Firstly, the land acquisition process utilising the PPP approach compared with a more traditional approach will be discussed. After, the land development process with a PPP approach will be compared with the traditional approach. The basic characteristics of the public body will be discussed. The development framework will be elaborated on with the help of a case study: the Disneyland Project. Finally the future of the PPP approach in land development will be used as conclusion.

In order to compare with the traditional approach of land acquisition, five aspects will be discussed. They are the location of land, scale of land, land value, clauses in the Government Lease and the time needed for land acquisition.

Regarding the location of land, in using PPP approach, the most favorably located land can always be achieved, as the public body will generally have full knowledge of what is available. Plots in remote locations or reclaimed land can also be utilized. This ensures full utilization of all the land resources available.

For the scale of land in PPP projects, large scales are usually involved, compared to private developments. In this sense, the private company will have the chance to engage in large government projects.

With regards to land value, the main concern is land premium assessment. In private developments, the private company needs to acquire a piece of land through public auction, tendering, negotiation or the payment of compensation to the existing owners/ occupiers. All of the above methods involve the fair market value of land premium.

Using the PPP approach, either no premium is needed or the land premium will be reduced. For the cases in which the public body uses the land directly as an input, obviously no premium is needed.

For cases in which the public body in PPP projects needs also to acquire a piece of land from another public body not involved in the PPP project, the land premium can also be reduced. The reason is as follows. By using the PPP approach, the public body, which uses the land as its input and can thus reduce its capital investment, has in general a relatively lower risk than a private company, which demands a substantial cash flow in the project.

Risks in development projects arise from a variety of sources and are of several types: political/ environmental; market/ economic; hazard/ safety; and technical/ functional. If there is a problem in the project, a private company may lose all of its investment, while the public body can simply get back the land which has implicitly no opportunity cost. Thus, following this reasoning, generally the land premium can be made slightly lower than its fair market value in order to reflect the lower risk in using the land as input.

From this point of view, by using a PPP approach, private companies can reduce their financing costs and therefore enhance their cash flows. Moreover, traditionally clauses in the government leases are solely determined by the Government. These include terms and some development parameters such as user, plot ratio, height restriction, etc. In PPP projects, as the land is used as the input by the public body, the clauses in the government lease are always set up by negotiation between the public and private sector. In this way, there will be more interaction between the parties and the clauses set up will fulfill the expectations of all of them. In this sense, the flexibility and development parameters of the land can also be enhanced.

The land acquisition approval process in PPP projects is accelerated. The most desirable cases are that the public body uses the land directly as an input, as we have discussed. In cases in which the public body in a PPP project also needs to acquire a piece of land from another public body not involved in the PPP project, a separate section is always set up to deal with the land acquisition process. The URA section in the Lands Department is one example. In this way, the land acquisition process is more efficient.

During the land development process in PPP projects, the public body takes up the responsibility of providing land resources and land acquisition procedures. On the other side, the private company is responsible for the design, construction, operation and financing of the project. Either party is involved in the process of property

management and maintenance. In this sense, the PPP approach is just like utilizing private resources or capital to provide public services or infrastructure development.

One of the drawbacks of PPP compared with the traditional development approach can be mentioned here. It can be difficult to assess the time-frame for development due to political problems in PPP projects. Take the URA Projects as an example. One of the key impediments to urban renewal has been the slow and uncertain process in the resumption of sites due to arguments on compensations to assemble the lands.

Three characteristics of the public bodies in PPP projects are worth noting. Firstly, the public body should be empowered to provide capital and resources, and most importantly the land itself. Secondly, it generally holds statutory power. For example, the Urban Renewal Authority with the Land Resumption Ordinance. Thirdly, it generally has a good credit rating. Generally, the public body has strong bargaining power in acquiring construction loans. This can greatly reduce the financing cost of the whole project.

### Case Study

The Hong Kong Disneyland, one of the mega projects in Hong Kong, is being taken forward through a PPP arrangement. In this case, the infrastructure will be provided through the normal Public Works Programme, with transport and other utilities provided by the public transport operators and utility companies. The park itself will be a partnership between the Walt Disney Company and the government. A joint venture company, the Hong Kong International Theme Parks Limited (HKITP), has been set up for this purpose.

Apart from the theme park, Phase I of the project will also include three to four Disney-themed resort hotels with up to 2,100 hotel rooms to be constructed adjacent to the theme park, and a 28,000 square metre retail, dining and entertainment complex. Phase I of Hong Kong Disneyland (excluding land premium) will cost a total of \$14.1 billion to develop and is expected to open in 2005. The land premium for Phase I is \$4 billion, representing the estimated pro rata cost for reclamation and land formation. The arrangement is that the government has provided the land, and the HKITP will settle the premium by issuing \$4 billion worth of subordinated shares to the Government. These shares attract no dividends in themselves, but are convertible to ordinary shares in the company at a progressive rate depending on performance above base case. In turn, the government has provided the land as an equity injection in the project. The Walt Disney Company is responsible for the design and management of the park itself.

The \$14.1 billion cost of constructing Hong Kong Disneyland has been financed by a mixture of debt and equity at a commercially

prudent ratio of approximately 60:40. This translates to \$5.7 billion in equity and \$8.4 billion in debt.

Walt Disney has put up \$2.45 billion in equity and holds a 43% stake in the HKITP. The government has also put up \$3.25 billion in equity in HKITP and holds a 57% stake. The debt of \$8.4 billion will be raised by a commercial loan of \$2.3 billion and a government loan of \$6.1 billion, the latter repayable over 25 years from the date of the park opening.

The following summarises the financing of the project:

Funding Sources	Amount (\$billion)	% to Total
<b>Equity, of which</b>	5.7	40.4%
- Government	3.25	23%
- Disney	2.45	17.4%
<b>Debt, of which</b>	8.4	59.6%
- Government	6.1	43.3%
- Commercial	2.3	16.3%
<b>Total</b>	14.1	100%

### Conclusion

Because of the problem of the government fiscal deficit, PPPs are growing more and more common in Hong Kong. While the public sector is cash poor, it is also land rich. PPPs can avoid any further investment from the public sector apart from the input of land. They can also share some of the future profits without having to raise capital. On the other hand, because of public sector involvement, the land premium can be reduced, and due to the good credit rating of the public sector, financing costs and thus necessary start-up funds can be reduced.

Recently, the joint development tender submission for the URA Johnston Road Project in Wan Chai, attracted 32 private developers to express their interests. 14 tender offers have been received among 28 qualified developers. This demonstrates the confidence of private companies to get involved in PPP projects.

To conclude, the future of the PPP approach in land development looks bright. The public partners have increasing confidence in the PPP approach to land development. On the other hand, the private sector has also shown interest in PPP projects.

## A Case of **Mistake**

The settlement of a final account can be a long drawn out and tedious affair with many exchanges between the client's quantity surveyor and the contractor.

Quite often, as a means of endeavouring to draw matters to a conclusion the client's quantity surveyor will produce a document entitled Final Account that will be sent to the contractor for approval. On the last page of this document, where the final amount due to the contractor is indicated, the quantity surveyor will often include a provision that states something to the effect of:

*"The Contractor accepts the final payment set out above in full and final settlement of all matters arising under the Contract".*

and a space will then be provided for the contractor to sign his agreement to the final payment and hence the settlement.

Contractors sometimes sign final accounts containing such wording without giving full consideration to the ramifications of their actions. Often the account is signed simply as a means to secure early payment of at least the sum shown therein.

But what happens if subsequent to signing such a provision the contractor realises that he has made a mistake and that there are other matters that he is entitled to claim for that have not been included in the final account?

At first glance the obvious conclusion would be that the contractor is bound by the agreement set out in the final account, and if he has made a mistake therein, it is simply his bad luck for being careless and not giving proper consideration to the terms he was signing.

However the position is maybe not so simple as the recent case of **Hurst Stores and Interiors Ltd v ML Europe Property Ltd (April 2004)** in the Court of Appeal of England and Wales, indicates.

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

ML Europe entered into a contract with Hurst for the fitting out of the toilet blocks at Meryll Lynch's headquarters in London. ML Europe appointed Mace Ltd as the construction manager. The Contract Sum was approximately £2.4 million, but during the course of the works extensive variations were instructed.

The contract provided for a lump sum price adjustable only in respect of variations. The valuation of such variations was required to include for any associated disruption costs.

During the course of the works Mace prepared Interim Statements of Account on a monthly basis.

Approximately six months before the completion of the works, Hurst prepared a document entitled 'Final Account' which provided a valuation of the variations issued at that time by way of their direct cost, i.e. an assessment of labour, plant and materials, but included no assessment of the associated costs of disruption. The document was submitted to Mace.

After various discussions between Mace and Hurst, Mace produced a document in the same form as the Interim Statements of Account that had been prepared monthly throughout the project, but included the variations as priced by Hurst, and also changed the title to Final Statement of Account. At the end of the document the following wording was included:

*"In consideration of the agreement that final payment is to be made by the Client, we hereby agree that payment to us of THE FINAL PAYMENT will be accepted by us in full and final settlement of all our claims arising out of or in connection with the Trade Contract works which have accrued up to and including the date of this statement".*

Hurst signed the document, but did not actually read it, or consider the consequences of the wording.



Subsequently six months later when the works were completed Hurst prepared and submitted a further final account which included a significant sum in respect of the costs of disruption to the progress of the works, caused by the variations, most of which had been valued in the Final Statement of Account.

Mace rejected the claim on the basis of the signed agreement in the Final Statement of Account, i.e. that Hurst had accepted the payment as being in full and final settlement of all claims which had accrued up to the date of the statement.

The matter went to court where it was argued by Hurst that the Final Statement of Account was entered into on the basis of a unilateral mistake on its part, and that the document should be rectified to remove the reference to it being made in full and final settlement of all claims accruing up to the date of the statement.

Hurst gave evidence that it was a misnomer to call the document a final account and that it had only called his original document a final account because he had been told to do so by Mace. Hurst further stated that the documents had never been intended to be final accounts, simply an agreed record of labour, plant and materials used in the variations that had been issued at that time.

In both the Court of First Instance and subsequently the Court of Appeal, the courts agreed with Hurst, and held that the document entitled Final Statement of Account should be rectified on the grounds of unilateral mistake to remove the offending words.

In reaching its judgment the Court of Appeal found that there were three elements to consider. Firstly, whether Hurst was mistaken as to the contents of the document. Secondly, whether Mace had either actual or 'shut-eye' knowledge of that mistake, and thirdly whether overall the conduct of Mace was unconscionable.

The court found for Hurst on all three elements, and was particularly swayed by the fact that they felt Mace had acted in an unconscionable manner. Accordingly they ordered that the document be rectified permitting Hurst to pursue its claim for the costs of disruption.

However, contractors would be wise to treat this case with caution, and remain careful of what documents they sign, particularly with regard to the final account. To establish a claim for rectification for unilateral mistake is a difficult test. Hurst succeeded largely because he was able to establish that Mace had knowledge (either actual or shut eye) and that Hurst did not understand the significance of the document he was signing. In most situations a contractor who has mistakenly signed a final account would not be able to satisfy this test.

# Applications of Global Positioning System (GPS) in Hong Kong - At Sea and On Land: **Killing Two Birds With One Stone (Part Two)**

*Eric Ma, Survey Manager/  
Fugro Geotechnical Services  
(HK) Ltd.*

## GPS On land

Under the Materials Testing Services Term Contract (2002/2004) of the Hong Kong Housing Authority, Global Position System (GPS) with requirement of accuracy in  $\pm 200\text{mm}$  and readings in northing and easting unless otherwise approved by the Contract Manager, GPS has been extensively used to determine pile's positions for numerous non-destructive tests. Typical pile types include minipiles, socketed steel H-piles and large diameter bored cast in-situ concrete piles. Common non-destructive tests consist of Pile Driving Analyser (PDA) Test, Bell-out Test, Pile Integrity (PIT) Test and Sonic Logging Test. Up to now, more than 3,000 numbers of GPS surveys were completed.

The merits of using GPS in these tests are its fast, accurate and real-time capabilities. GPS operates 24 hours a day, 7 days a week under any weather conditions. It is also reliable, highly automatic and lack of inter-visibility requirements between stations. However, under these testing sites that are fully located with piles (see Figure 1), the utilization of GPS was downgraded by its main enemy – multipath effect. Multipath effect occurs when satellite signals arrive from more than one path. The effect can significantly distort the signal waveform's amplitude and phase. It also distorts the signal modulation and degrades the accuracy of the GPS system. Efforts were made to minimize this problem such as designed tool to put the GPS antenna onto the top of the piles (see Figure 2).



Figure 1 Construction site with lots of piles

Alternatively, two more temporary survey control points that are relatively far away from the pile were set up and the position of the pile was surveyed by intersection method from these two survey control points.

In addition to applying GPS in surveying pile's locations, GPS is also a powerful tool for setting up controls points for subsequent topographic, setting out and as-built surveys in onshore site investigation projects. It is because the main purpose of these site investigation projects is either to study the geological conditions of the project area for further infrastructure development or to investigate the soil conditions for slope stability analysis. These activities are usually occurred in remote areas with fewer survey control points. For example, GPS were used in the Contract No. GE/2003/06, 10-year Extended LPM Project Phase 3 Package E Ground Investigation Works for Slopes in Central & Western and Wanchai and Outline Agreement for Site Investigation Works for Existing / Prospective Sites of CLP Power's Premises (2002 – 2005).

What we have discussed so far is the real time kinematic GPS system that needs to set up two components. One is the base station that is usually set up on the survey control point for providing reference position. The other is the rover station that is usually set up on the unknown point for positioning. The resulting rover's position can achieve centimeter accuracy. However, for some site investigations in the hillside, it is not so easy to bring these GPS hardware to the site. To further simplify this GPS set up,



Figure 2 GPS antenna on top of the pile

hand-held GPS PDA is considered an alternative choice that can provide an effective and convenient tool for setting out and as-built surveys in remote areas (see Figure 3). This type of GPS set up was extensively used in civil engineering projects like Improvement to Tung Chung Road between Lung Tseng Tau and Cheung Sha - Detailed Ground Investigation. In this project, four Trimble GeoXT GPS PDA were used to set out 15 slope surface strips, 50 trial pits and 150 boreholes. As this GPS PDA provides windows CE 3.0 operating system and integrated GPS receiver, it has never been such easy to use GPS in our applications. Another important feature of the system was the installation of the GIS software called ArcPad 6.0. ArcPad allows users to locate their positions on the digital map so that they can go to the required position more easily.

In addition, since this GPS set up could be operated by one person, it was more stable for us to use in this project as all these setting out points were widely located along the 3km long Tung Chung road. This standalone Geo XT system could offer around 1m accuracy and this could be further enhanced by integrating it with a beacon receiver to receive differential correction. The integrated system provides accuracy as high as sub-meter that is considered sufficient for most of the onshore site investigation projects.

This is the end of my discussion but not the end of the autonomous development of GPS. With the recent reduction in costs and hardware requirements, GPS has become more and more important and common in various offshore and onshore civil engineering projects.

Figure 3 Surveyor with hand-held GPS PDA



# A False Dawn?

Thomas W. K. Li  
 MRICS, MHKIS, RPS(GP)  
 Associate Director of  
 Midland Surveyors Limited

Alvin T. P. Lam  
 MHKIS, BSc (Hons)  
 Chartered Surveyor of  
 Midland Surveyors Limited

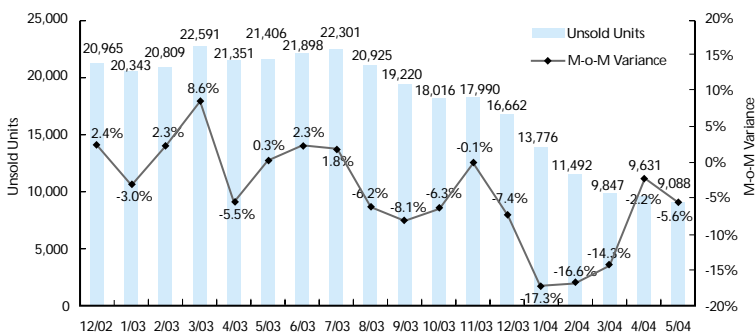
## Introduction

The May 25 Land Auction, the first in 20 months, aroused great public interest and intensive bidding among developers. Two residential sites in Sha Tin were sold at prices some 80% higher than the reserve price, triggering off an immediate bid for another piece of land on the reserve list and, of course, high hopes for the property market. Amid talks, once again, of the price of flour being higher than that of bread, the housing market failed to live up to expectations in the following weeks. After all, developers bidding for land is one thing, because land as a commodity, some would say a factor of production, is relatively scarce in Hong Kong, flat purchasers craving for accommodation is quite another, because the supply of housing is simply not so scarce.

## Declining Transactions

In fact, property transactions have been declining since the start of the second quarter of 2004, both in the first and second hand sectors. In the former, the absorption rate of unsold units in March was 14.3% (1,645 out of 11,492 units). April and May figures were 2.2% (216 out of 9,847) and 5.6% (543 out of 9,631) respectively, well short of the first quarter levels, as shown in Chart 1 below.

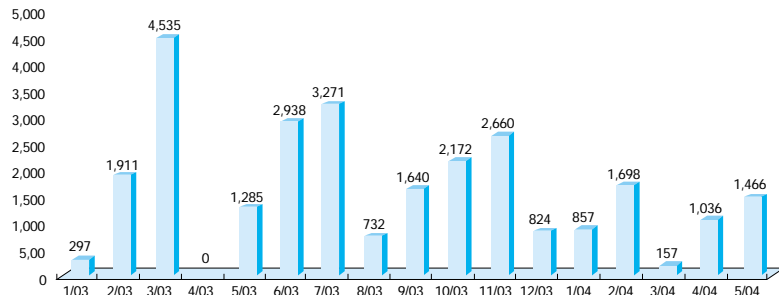
Chart 1 Overview of Unsold Supply Residential Units



Source: Midland Realty's Research Department

The sluggish sale was due not only to buyers' sentiment. Developers, buoyed by success earlier, raised their expectations and, therefore, house prices in the second quarter. This, in turn, further dampened purchasers' demand. The supply of new flats for sale was also reduced considerably, from 10,475 units in the second half of 2003 to 5,214 in the first five months in 2004 (see Chart 2 below). Under these circumstances transactions of first hand units were, therefore, substantially reduced. Despite good results from the land auction, sales have not picked up.

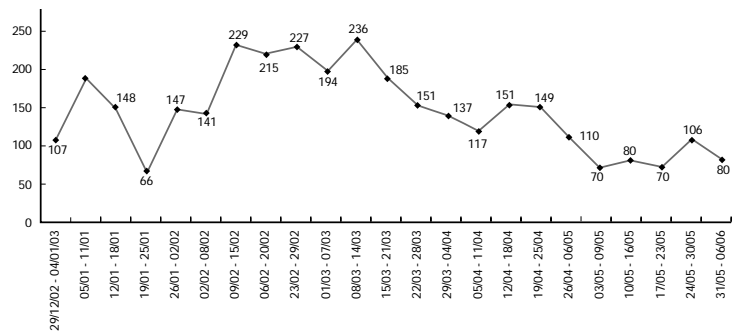
Chart 2 Overview on Launch of New Residential Units



Source: Midland Realty's Research Department

Similarly, in the second hand market, vendors, sensing a rosy picture ahead, raised their house prices and offered less in negotiations. As a result, transactions in 35 most popular estates continued to fall since late April 2004, down to a low point of 70 units one week before the land auction, with no significant rebound after then (see Chart 3 below).

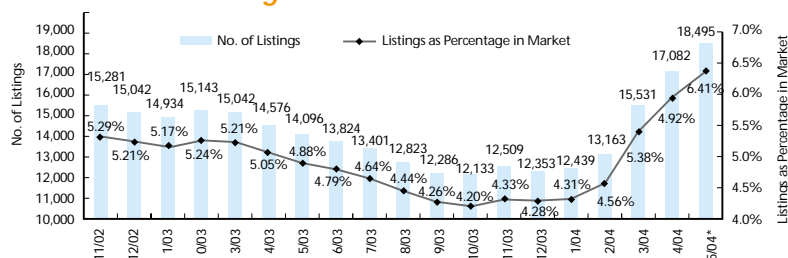
Chart 3 Weekly Resale Overview of 35 Popular Residential Estates



Source: Midland Realty Branches

On the other hand, the number of second hand units on offer has also increased. At the end of May, the number of flats for sale in 100 major estates amounted to 18,495, equivalent to 6% of the housing stock, the highest percentage since 2003 (see Chart 4 below).

Chart 4 Midland Realty's Second Hand Market Offerings at a Glance



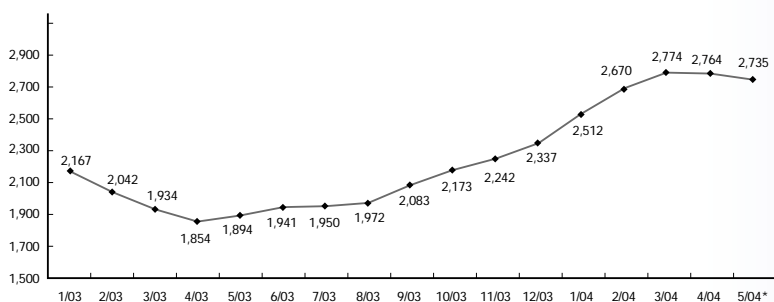
N.B.: This index of resale offerings is compiled from data gathered at 100 housing estates involving 288,739 units, excluding offerings that have been withdrawn.

Source: Midland Realty's Research Department

### Declining Prices

With demand faltering, it was inevitable that house prices faced a drop. At the end of May, house prices suffered an across-the-board 1.4% drop from the level in the first quarter, as shown in Chart 5 below.

**Chart 5 Home Price Trend (2003 – Present)**



\*Provisional figures

Source: Midland Realty's Research Department

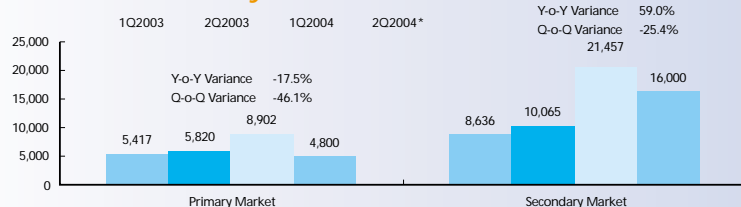
### Second Quarter Forecast

The high accommodation values achieved in the two auction sites, meaning that their purchasers had expected a 30% to 40% increase in price levels of flats in their locality, however, failed to act as a spur to arouse buyer' sentiment, at least not yet.

As it stands, it is expected that sale of first hand units will continue to be slow. Developers, expecting a brighter future from the results

of the land auction, are unlikely to lower the flat prices nor push up the amount for sale. In the second quarter, only 4,800 transactions are anticipated, a 17.5% drop from the same period last year and a staggering 46.1% drop from the previous quarter. First hand sales are expected to be slow, at least in the second quarter. See Chart 6 below.

**Chart 6 Sales Trend for Homes in the Primary, Secondary Markets**



\*Provisional figures

Sources: Land Registry & Midland Realty's Research Department

Similarly in the second hand market, vendors tend to raise their flat prices after the land auction results, or at least are reluctant to reduce their prices. Purchasers, on the other hand, are unlikely to be persuaded by these results and chase after these flats. The second hand flat sales are expected to reach only 16,000 in the second quarter, a 25.4% decrease from that in the first quarter. See Chart 6 above.

### Conclusion

Are the May auctions a false dawn? Not necessarily. The housing market is undoubtedly entering into a consolidation period. Barring unforeseen adverse economies, the housing market should then proceed on a healthy, steady pace. After all, the sun has to come out.

## A SNAPSHOT OF WOMEN IN SURVEYING

### Monita Leung

Senior Real Estate Manager,  
Hang Seng Real Estate

Interviewed by Kelvin Ng,  
JO Committee member

#### Where did you obtain your degree in surveying? Why did you choose this profession?

I am running the risk of revealing a woman's secret by telling you that I graduated from the Hong Kong Polytechnic. Anyway, I enjoyed my time there. In those days, it was a rare sight to spot a female student in the surveying classroom. I chose this subject because I heard good comments from a senior surveying student. She kindly told me all the "Ins" and "Outs" of GP surveying. I thought this profession would be ideal for me.

#### How did you get started with the surveying career?

I started my career with the Lands Department as

a Student Estate Surveyor and luckily qualified after completing the training program. A big "Thank You" to my boss in the Lands Department.

#### What was your first job and what was your career path?

While enjoying my career with the Lands Department doing valuation and land administration work, I also started another career as "Mrs...." and fortunately or unfortunately got married to another GP surveyor with a "travel bug". We then arrived at the land of the "the God must be crazy" (a country called Botswana-adjacent to South Africa) and started an interesting surveying career in Africa doing valuation of crocodile farm, safari camp etc. I returned to Hong Kong before the 90's property boom working for the private