

測量邁銀禧 專業惠社群  
Building our Community  
Contributing our Professionalism



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# SURVEYORS

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Times

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*Green initiatives*  
倡議環保

## HKIS 2008-2009 General Council

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香港測量師學會

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Members of the Editorial Board have recently held its meeting to discuss the ways ahead for the Institute's publications. One major direction is to strengthen the quality and content of the Institute's publications. In this regard, I would encourage members to submit articles particularly relating to the professional surveying practices for publication in the Surveyors Times. The Institute is also very supportive of initiatives towards preserving and protecting the environment. Thus, the Institute will ask members whether they prefer to receive HKIS publications in electronic form in the 2009-10 Annual Subscription Membership Renewal Form. I hope that members would support a more sustainable and environmental friendly society by accepting an e-copy of HKIS publications.

To celebrate its 25<sup>th</sup> Anniversary, the Institute would invite all members to its Birthday Party on Sunday, 26 April 2009 at 12:00 noon at the American Club Hong Kong, Tai Tam. Please come and witness the achievements of the Institute.

A forum on the possibility of having another membership reciprocity arrangement with the China Institute of Real Estate Appraisers and Estate Agents was held in March. Members are encouraged to express their views and concerns to the GPD Council.

About 180 members expressed their interest to participate in the second batch of qualification recognition with the China Engineering Cost Association. The QSD Council will commence dialogue with CECA on this subject.

The BSD Council has offered comments on several government proposals including the amendment to the Technical Memorandum of Supervision Plans to cater for the implementation of minor works control under the Buildings Ordinance, registration qualifications of the Approved Inspectors for MBIS, and amendment to the PNAP on signboards construction.

There will be a number of survey conferences to be held, including the FIG Working Week, the 10<sup>th</sup> South East Asian Survey Congress, the 6<sup>th</sup> International Symposium on Digital Earth, 7<sup>th</sup> FIG Regional Conference, the 6<sup>th</sup> Beijing, Hong Kong and Macao Geomatics Conference, and the 6<sup>th</sup> Across-the-Strait Geomatics Conference. Members are encouraged to participate in these events.

Dr Paul Ho  
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編輯委員會成員於最近的會議中曾討論學會刊物未來的路向，提升質素及內容將會是主要的大方向。我謹在此呼籲各位會員踴躍提交專業文章，於《測量師時代》中刊登。另外，學會對環境的保護亦十分重視，因此，我們將會隨會員年費通知單，向會員發出意向調查，是否同意接收電子版的2009-10年報。我希望各位會員能夠支持建造一個環保的社區，同意接收電子版本的學會刊物。

為慶祝學會成立25周年，學會現邀請各位會員參加2009年4月26日中午12時，假美國會所舉行之聯歡會，見證學會的成長。

學會於3月舉辦了公開論壇，了解各會員對於與中國房地產估價師學會舉行第二次資格互認的意向及意見。會員如有任何意見，歡迎與學會產業測量組聯絡。

大約180名學會工料測量組會員表示有意參加第二次與中國建設工程造價管理協會的資格互認。工料測量組將與協會進行磋商。

學會建築測量組就政府多項措施提供意見，當中包括監工計劃技術備忘錄的修改、強制驗樓計劃中合資格驗樓師的資格註冊、招牌建設備考的修改。

近期有多個測量業的研討會，包括FIG工作周、第十屆東南亞測量會議、第六屆數位地球國際研討會、第七屆FIG區域會議、第六屆京港澳測繪技術交流會及第六屆海峽兩岸測繪發展研討會，歡迎各位會員參加。

何學強博士  
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## Humble Celebration of our 25<sup>th</sup> Anniversary

He who loses faith loses all. The downside: the economy is in bad shape; the unemployment rate is high and still climbing; the outlook is gloomy; and we wish we knew when and how it would end. The upside: in the global village we are not the hardest hit; we may still stand to benefit from the Mainland's economic growth; and above all, the Hong Kong SAR is more resilient, having survived the previous crises which were no less severe than the present one. I know, of course, some are saying that the one in front is the worst, just like what they said on each of the previous occasions – the pre-1997 uncertainties, the Asian Financial Turmoil, and the SARS epidemic.

These were the messages that I gave to university students on two recent occasions on behalf of the Institute. The students, those graduating this summer included, were as upbeat as ever. The worries that others (and their parents) might have did not seem to cause a dent in their eagerness and readiness to prove their worth to society. Not just my own observations, but also those of the professors and practising surveyors whom I chatted with. Good news of course, although at one point I could not tell whether the students truly apprehended the threats or they were already mature enough to conceal their feelings. "With youth on your side, you should have no fears,"

I said, not as an empty statement of encouragement. Two swimmers, both out of their depths, can make it to the other side of the river only because they choose to swim together. So the older swimmer, running out of means, has the younger swimmer, with strength and resolve, to come to his rescue. Meanwhile, both stay afloat and keep swimming.

During these hard times the General Council is particularly alert to the needs and wants of our members. We see the plight of members, from job insecurity to financial hardship. We have obtained the Government's agreement that there would be an increase in the employment of surveying graduates in government departments this summer. We will be in discussion with surveying firms and employers for giving members a sense of job security. We are looking into means of prompt notification to members about job vacancies. We have not yet come up with a recommendation for direct financial assistance or rebate to members, but we will keep a close eye on the development.

Meanwhile, the surveyors' contributions to society have not been allowed to diminish. During the past months, through committees and working groups, the General Council has made suggestions and comments to the Government and

other authorities on various policy issues and has publicized our views, covering:

- Public Facilities in Private Development
- Land Titles (Amendment) Bill
- Building Maintenance Grant Scheme
- Views on HKSAR Budget 2009-10
- Removal of Abandoned Signboards

Other subjects on which we are working include:

- Urban Renewal Strategy Review
- West Kowloon Cultural District; Public Engagement
- Land (Compulsory Sale for Redevelopment) Ordinance; Chapter 545
- Measures to foster a quality and sustainable built environment; Control on GFA Concessions
- Design Guidelines for Adaptive Reuse of Heritage Buildings
- Revitalization of Industrial Estates

Members interested in knowing more are welcome to visit our website. You are also welcome to give comments or join the relevant committees / working groups. Just drop us a line at [info@hkis.org.hk](mailto:info@hkis.org.hk).

To mark our 25<sup>th</sup> Anniversary, the Institute is planning for a series of celebration events. We are honoured to have the Honourable CY Leung, Past President, as Chairman of the 25<sup>th</sup> Anniversary Organising Committee. Members will have received our invitation to the Birthday Party on Sunday, 26 April 2009 at 12:00 noon at the American Club Hong Kong, Tai Tam. Membership price is HK\$380.00 per head. Places are limited, so hurry to avoid disappointment.

As much as we are conscious of the fact that extravagant celebration is not appropriate, the hard work and achievement of all members over the past 25 years do deserve some kind of formal recognition. The following is a brief preview of upcoming activities:

- HKIS Silver Jubilee Cup, Jockey Club Horse Racing, 9 May 2009
- Annual Conference 2009 – Surveyors in Urban Regeneration, 26 Sept 2009
- Annual Dinner 2009, mid November 2009
- HKIS 25<sup>th</sup> Anniversary Publication

I look forward to members' full participation. For those of us privileged enough, I urge you to be a sponsor of activities of your choice. Full details of the events and sponsorship packages are posted in our 25<sup>th</sup> Anniversary web-site: <http://www.hkis.org.hk/hkis/html/25/index.htm>.

We once thought of but did not eventually pursue the idea of a time capsule. Nevertheless, I hope this brief report will bear testimony to the surveyors' strengths and resolve, after we have made it to the other side of the river.

Francis Leung  
President

**THE HONG KONG INSTITUTE OF SURVEYORS**  
香港測量師學會

THE HONG KONG INSTITUTE OF SURVEYORS  
Building our Community  
Contributing our Professionalism

香港測量師學會  
謹訂於  
二零零九年四月二十六日(星期日)  
假座香港大潭道二十八號美國會所  
舉行二十五周年銀禧聯歡會  
恭候光臨  
香港測量師學會會長  
梁立基敬約

The President of the Hong Kong Institute of Surveyors requests the pleasure of your company on the occasion of its

**25<sup>th</sup> Anniversary Silver Jubilee Birthday Party**  
at  
The American Club Hong Kong  
28 Tai Tam Road, Hong Kong  
on Sunday, 26 April 2009

Cocktail	12:00nn
Ceremony Starts	12:30pm
Lunch Buffet	1:15pm

Dress Code	Smart Casual
RSVP	By attached reply slip
Enquiry	Ms Donna Yu or Mr Coody Ko at 2526 3679

酒會	中午12時
典禮	下午12時30分
自助餐	下午1時15分

服飾	優雅便服
敬祈指示	隨柬附上回條
查詢	2526 3679余小姐或高先生

## 25周年慶祝活動

「誰失去信心，將失去一切」。經濟的不明朗、失業率持續上升、前景黯淡、渴望何時及如何才走出困境，這都是悲觀的想法。從樂觀方面看，相比起其他國家，本港目前的經濟情況並不最壞，而且還可受惠於內地經濟增長的優勢，相信香港特區政府擁有強大的抵抗能力，抵禦現時的經濟危機。儘管有人會覺得目前是最艱難的時期，就正如以往經歷1997前的不明朗、亞洲金融危機及沙士爆發的情況。

以上是我最近兩次代表學會向大學生講話的大致內容。將於今年畢業的大學生就如以往一樣的樂觀，其他人的擔心（或許包括家長）亦似乎並沒有削弱他們證明自己社會價值的決心。這不只是我的個人意見，而是我當天與教授們和執業測量師言談間所得的結論。雖然我不能肯定學生能意會到真正的危機，又或他們有能力隱瞞自己的情緒，但這正是一個好消息。我說：「青春猶在，無懼無悔」這並不是一個空洞的鼓勵說話。兩名游泳健兒離開了自己的深度，可以游到對岸是全因為他們能互相扶持。因此，較年長的泳手，會有年輕的泳手在旁，憑著實力和決心，達至彼岸。

於這艱難時期，理事會亦意識到會員的需要。我們感覺到會員從工作缺乏安全感，與及財政困難的不安。政府已同意於暑期增加聘請見習測量學員的名額。我們亦會鼓勵測量同業及僱主，給予會員工作上的安全感；我們亦正在探討適時通知會員有關的職位空缺的情況。理事會現時並未有為會員提供財政援助或回饋，但我們將密切注視事態發展。

我們就測量師社會的貢獻亦從不鬆懈。於過去數月，透過各委員會及工作小組的努力，理事會於不同的議題上已向政府及有關當局提交意見，當中議題包括：

- 私人發展項目內提供公共設施
- 《土地業權條例》的修訂
- 維修自住物業津貼計劃
- 2009-10年度財政預算案
- 清拆棄置招牌

其他學會正在研究的課題包括：

- 市區重建策略檢討
- 西九龍文娛藝術區公眾參與
- 土地【為重新發展而強制售賣】條例（第545章）
- 構建優質和可持續建築環境的措施的社會參與過程；計算豁免總樓面面積
- 文物建築的循環再用設計指引
- 振興工業區

會員如有興趣了解詳情，請瀏覽學會網頁。如會員有任何意見，或有興趣加入各委員會或工作小組，可電郵至info@hkis.org.hk

我們正計劃一系列活動，以慶祝學會成立25周年。我亦十分榮幸邀得學會前會長梁振英先生擔任25周年籌備委員會主席。相信各位會員已收到邀請報名出席於2009年4月26日【星期日】中午12時，假美國會所舉行的銀禧聯歡會。會員參加費用每位為港幣380元，由於名額有限，為免向隅，請從速報名。

我們明白奢侈的慶祝活動現時並不太適當，但各會員於過去25年來的努力和貢獻總是值得一點嘉許和慶祝。以下是學會近期將舉辦的活動：

- 2009年5月9日沙田馬場，香港測量師學會銀禧紀念盃
- 2009年9月26日香港測量師學會周年研討會—市區重建
- 2009年11月中旬香港測量師學會周年晚宴
- 香港測量師學會25周年紀念特刊

我期望得到各位會員的支持及參與。我亦誠意邀請你成為活動的贊助商，有關贊助詳情，請瀏覽25周年網頁<http://www.hkis.org.hk/hkis/html/25/index.htm>。

我們曾考慮設立時間囊，但最終沒有實行。我卻希望藉著這簡短的報告，日後能證明我們測量師應付目前挑戰的決心和能力。

梁立基  
會長



## Amendments to Land Titles Ordinance

The Joint Sub-committee on Amendments to Land Titles Ordinance (LTO) was recently formed under the Panel on Administration of Justice and Legal Services and Panel on Development to monitor the Administration's work on the preparation of amendments to the Land Titles Ordinance (Cap 585) and provide input in the bill drafting process. The Joint Sub-committee invited the Institute to attend its second meeting on 19 March 2009. Dr Conrad Tang of the Land Surveying Division and Mr Tony Wan of the General Practice Division represented the Institute at the meeting.

The views of the HKIS on two papers prepared by the Development Bureau dated December 2008, namely "Consultation on amendments to LTO – Conversion of Existing Land and Property to Land Title Registration System" and "Consultation on amendments to LTO – Rectification and Indemnity Provisions" were submitted to the Joint Sub-committee. A full copy of the written submission can be viewed at the website [http://www.hkis.org.hk/hkis/html/newsroom\\_position.jsp](http://www.hkis.org.hk/hkis/html/newsroom_position.jsp).

More background information on the LTO and relevant papers submitted by the Administration to the relevant Legislative Council committees in recent years can be viewed at the following link: <http://www.landreg.gov.hk/consultation/en/background.html>.

## Open Forum on Cap 545

The open forum on Cap 545 organised by HKIS was successfully held in the evening of 13 March 2009. The attendance indeed demonstrated the keen interest of the construction related professionals of Hong Kong in the urban regeneration process. The forum was open to all members of HKIA, HKIP, HKILA, HKIE and HKIS. Total attendance including the 4 speakers, 1 moderator and 5 guests of

property owners amounted to 202, which filled up the Surveyors Learning Centre.

After the presentation / talks by the speakers (Mr Charles Chan, Vice-chairman of GP Division, Mr Stephen Ng, Vice-chair of the Wan Chai District Council and the Honourable James To, a councillor of the Legislative Council) the Moderator, Dr C K Law of University of Hong Kong, opened the forum to the floor. There were heated discussions which heavily focused on whether the provisions of Cap 545 is offering enough protection to private property rights if the threshold is reduced from the current level of 90% ownership.

It was noted that in other Asia cities the threshold to permit private development is fairly loose. Hong Kong is by all counts the most stringent and protective to private property rights that are ripe for redevelopment.

The consensus which could be considered emerging from the discussions was that there would be huge rising costs to both the public and private sectors in holding ageing properties. With the growing concern of the environment and townscape, the potential of developable sites would be diminishing. With these facts in mind, professional surveyors should consider when and what gradual actions should be taken to facilitate more private sector activities in regenerating the decaying urban fabric. Whether the current check and balance systems including the Lands Tribunal functions under the Ordinance could safeguard private property right is another scope of the subject that professional surveyors have to review and make appropriate recommendations.



Speakers from left: Dr C K Law, the Hon James To, Stephen Ng and Charles Chan

## Memorandum of Understanding between HKIS and ZHCF

At the Zhong Hua Construction Foundation (ZHCF) charitable dinner on 26 February 2009, the signing ceremony of the Memorandum of Understanding (MOU) between Hong Kong Institute of Surveyors (HKIS) and ZHCF was successfully held. This MOU was made for the first pilot cooperation project regarding the water supply systems for domestic and livestock in Tongkou Town, Beichuan County, Sichuan, China (中國四川省北川縣通口鎮人畜供水系統項目).

President Francis Leung signed the MOU on behalf of the HKIS and Executive Vice Chairman Albert CHEUNG Hau Wai signed on behalf of ZHCF. The signing ceremony was witnessed in the presence of the Office Bearers and Immediate Past President YU Kam-hung and representatives



Front row: Albert Cheung and Francis Leung  
Back row: Prof Francis Lau, Dr Raymond Ho and YU Kam-hung

from the ZHCF including Dr Raymond HO Chung Tai, Chairman of Supervisory Board and Professor Francis S K Lau, Chairman of the Executive Board.

## News from Guangzhou Forum

*Serena Lau, Chairman, Guangzhou Forum*

On 6 March 2009, 20 members from various divisions had participated in the visit of Taikoo Hui project at Guangzhou. We were pleased to have our senior member, Mr Peter Kok, General Manager of the Taikoo Hui project, sharing with us his experience, from site acquisition and negotiation, project planning, retail mall design, project and site management to marketing and showroom design

during the visit. Peter also shared with us his insight on the property market. Special thanks to Mr Alan Walker and Ms Karen Ou for helping us to arrange this meaningful event.



Frequent luncheon gatherings will be arranged by the Guangzhou Forum in various cities in the coming months. Another CPD event in Shenzhen is being planned. Further details will be announced to members via the web mail or in Surveyors Times.

## Spring Dinner with Liaison Office

Members of the Executive Committee were invited to a Spring Dinner by the Liaison Office of the Central People's Government in Hong Kong SAR on 11 March 2009 at the World Trade Centre Club, Causeway Bay, Hong Kong. The Dinner was hosted by Ms Sun Aqing, Deputy Director General of the Co-ordination Department and she was joined by Mr Cai Wen Feng, Division Chief and Ms Wu Yuen, Deputy Division Chief. The Chairmen of the Boards of Education, Membership and Professional Development were also present.





## HKIS Surveyors Luncheon

The second Surveyors Luncheon of the year was held on 19 March 2009 at the World Trade Centre Club. We were delighted to have invited Mr Albert CHEUNG Hau Wai, Executive Vice Chairman of Zhong Hua Construction Foundation (ZHCF), and former Director of Buildings, HK-SAR Government. The work and contributions by ZHCF towards the reconstruction work of Sichuan following the devastating earthquake in May last year were introduced to members and guests. Mr Cheung welcomed HKIS members to join the Foundation and volunteer their professional expertise towards the relief projects by the Foundation.



## Call for articles on professional surveying practices

Do you have something about professional surveying practice which can be shared with our members? The Editorial Board would welcome such contributions for publication in Surveyors Times.

Articles can be in English or Chinese and should be submitted in Word format and include the title of the paper and author's details. For articles in Chinese, a summary in English will be required. Submissions must not have been published previously. Publication of article will be at the discretion of the Editorial Board whose decision shall be final.

Articles are to be emailed to [editor@hkis.org.hk](mailto:editor@hkis.org.hk).

## Calling for Professional Papers

To promote the real estate industry of Hong Kong as well as to broaden professional knowledge, publication of professional papers or reports on topics related to the industry from our professionals is highly encouraged.

Professionals may consider writing on topics in relation to the following:

- **Building Surveying:**  
Building Management and Maintenance, Building Safety etc
- **General Practice Surveying:**  
Valuation, Development Consultancy, Sales and Letting etc
- **Land Surveying:**  
Mapping, Land Management and Information Technology etc
- **Planning and Development:**  
Property Development, Town Planning etc
- **Property and Facility Management:**  
Property Asset Management, Facility Management etc
- **Quantity Surveying:**  
Contract and Cost Management, Value Engineering, Project Management etc
- **Others:**  
Dispute Resolution etc

Selected papers (with names of their authors) will be published and distributed to Government bodies, professional bodies, education institutes, business enterprises etc. Please note that all professional papers submitted will be vetted by relevant Divisions, the Promotion Committee and Executive Committee, and will only be published subject to all approvals being obtained. If you have any enquiries, please contact Mr Yu Kam Hung on 2820 2832.

Your contribution to our industry would be highly appreciated. If you are interested, please send a soft copy of your professional paper to: [coody@hkis.org.hk](mailto:coody@hkis.org.hk) or you may contact Mr Coody Ko on 2526 3679 for further information.

## Surveying and Built Environment — Call for papers

### Property rights, regulations and sustainable development

Contributions are welcome for the next issue of Surveying and Built Environment (Journal of the Hong Kong Institute of Surveyors) in 2009 in the fields of surveying and development, with a focus on property rights, regulations and sustainable development. Both theoretical and practical contributions are welcome.

Submissions must not have been published previously and should be in Word format. Submission Guidelines can be obtained from the HKIS website at [www.hkis.org.hk](http://www.hkis.org.hk).

Only articles that demonstrate novelty and a theoretical or practical contribution (in the form of propositions and/or verifiable hypotheses) in the context of a rigorous literature review can be considered. Evidence of ethics clearance by relevant institutions must be provided for papers involving human data collected by social surveys.

All submissions will be screened first by the Chief Editor before they are blind refereed. A definite decision by the Editorial Board will be made within 60 days of submission. Comments of referees and editors will be disclosed to authors if their works are refereed.

Please send contributions by email in the first instance to Professor Lawrence Lai at [wclai@hku.hk](mailto:wclai@hku.hk) or to [editor@hkis.org.hk](mailto:editor@hkis.org.hk).

**Deadline for submission of papers is 31 May 2009.**

## Corrigendum

On page 35, Vol 18, No 2, the author of the article *One-day Seminar on Contract Management 2009* should read Katherine Wong and not Kathy Cheung. We apologise for any inconvenience caused.

## HKIS Publications — Electronic copy to save the environment

The Institute is supportive of all initiatives towards preserving and protecting the environment. One of the initiatives is moving towards a paperless environment in the long-term future. Thus, the Institute shall be asking all members to indicate on their 2009-10 Annual Subscription Membership Renewal Form as to whether they would prefer to receive the HKIS publications - Surveyors Times Newsletter, Surveying Built Environment Journal and Directory & Annual Report, in hard copy or an electronic copy only

We hope that with members' support, we can help contribute towards a more sustainable and environmental friendly society. Looking forward to having your support.

## Council members reaching out

3 March 2009

### Cocktail Reception of Hong Kong Society of Notaries

Mr Ben Chong

### Spring Dinner of Commercial Office, Economic Affairs Department Liaison Office of the Central People's Government in the HKSAR

Mr Stephen Yip

The Closing Ceremony of the First International Conference on Utility Management and Safety jointly organised by the Hong Kong Institute of Utility Specialists and Hong Kong Utility Research Centre

Mr Lesly Lam



11 March 2009

### Spring Dinner of the Liaison Office of the Central People's Government

Mr Francis Leung, Mr Stephen Yip, Mr Lesly Lam  
Mr Wong Bay, Mr Kenneth Yun, Dr Lawrence Poon  
Mr Sung Hon Kong, Mr Edwin Tsang, Mr Daniel Ho  
Mr Yu Kam Hung, Mr Joseph Chong, Mr Evenlyn Kwok  
Prof Barnabas Chung, Mr Tang Ki Cheung

Public Seminar on Greening organised by Architectural Services Department, HKSAR

Mr Kenneth Chan, Mr Antony Man

Mr Mok Kin Fung, Fred, Mr Cheung Man To

12 March 2009

Monthly Thursday Luncheon organised by Legislative Council

Mr Francis Leung

13 March 2009

Inauguration Ceremony of Architectural Society, HKUSU, Session 2009-2010

Mr Francis Leung

16 March 2009

Dinner with Mrs Carrie Lam, Secretary for Development, Development Bureau, HKSAR

Mr Francis Leung, Mr Stephen Yip, Mr Wong Bay

Mr Ben Chong, Mr Lesly Lam, Mr Kenneth Yun

Dr Lawrence Poon, Mr Sung Hon Kwong

Mr Edwin Tsang, Mr Daniel Ho, Mr Joseph Chong

Mr Yu Kam Hung, Mr Tang Ki Cheung, Mr Evenlyn Kwok

Prof Barnabas Chung

17 March 2009

Focus Group Meeting on Facilitation of Urban Redevelop-

ment by the Private Sector organised by Central Policy Unit

Mr Stephen Yip

18 March 2009

Annual Dinner of the Hong Kong Institution of Engineers

Mr Francis Leung

19 March 2009

Joint Subcommittee on Amendments to Land Titles Ordinance Meeting under Panel on Development and Panel on Administration of Justice and Legal Services organised by Legislative Council

Dr Conrad Tang, Mr Tony Wan

Scholarship & Prize Presentation Ceremony of City University of Hong Kong

Dr Lawrence Poon

20 March 2009

Annual Dinner of Hong Kong Institute of Project Management

Mr Francis Leung

31 March 2009

Retirement Cocktail Reception for Miss Wong Lai-chun, Chief Executive and Executive Director of the Hong Kong Housing Society

Mr Francis Leung



## The PAQS-IWATA Foundation 2009 Travelling Scholarship Competition

The Pacific Association of Quantity Surveyors (PAQS) established the PAQS - Iwata Foundation for the purpose of promoting the QS profession and the professional development of young quantity surveyors in the PAQS region. The Foundation is now sponsoring an international essay competition for young QS from PAQS member countries.

The competition winner will receive travel, accommodation and full registration for their attendance at the next PAQS Annual Congress, which in 2009 will be held in Kuala Lumpur, Malaysia from 16-18 August.

The winning entrant will be invited to observe the pre-congress PAQS Board meetings and take part in official social networking functions.

**Entries for the competition are now being accepted and close on 30 April 2009.**

Properly completed essays should be emailed to the PAQS Secretary at [contact@aiqs.com.au](mailto:contact@aiqs.com.au)

**The topic for the essay competition is:**

***"The impact of the current financial crisis on the globalisation of the construction industry cost management profession."***

Members of HKIS who are 40 years of age or under are highly encouraged to participate in this competition.

For further details about conditions of entry and rules for submission, please download from [http://www.hkis.org.hk/hkis/general/broadcast/PAQS-IWATA\\_Foundation\\_Competition.doc](http://www.hkis.org.hk/hkis/general/broadcast/PAQS-IWATA_Foundation_Competition.doc)



## Building Surveying Division Chairman's Message



*Kenneth Yun BSD Council Chairman*

### BSD efforts and views on hot issues - Budget Speech related issues

Our spokespersons, Mr Raymond Chan, Mr David Chan and Mr Vincent Ho, have had a busy March. After the Budget Speech by the Financial Secretary in late February, our spokesperson Vincent Ho, was invited by reporters from Ming Pao and Sing Tao Daily News respectively, to express his views on urban renewal and building maintenance.

Furthermore, the Institute had prepared a Press Release on 4 March 2009 in response to the Budget Speech while the BSD has actively participated in providing input to the Budget 2009-10 on paragraphs relating to Green Buildings, Establishment of Development Opportunities Office to Promote Private Development Projects, Urban Renewal and Building Maintenance.

Subsequent to the press conference held by the Buildings Department on 11 March 2009, which announced details about the removal of 5,000 abandoned signboards, our spokesperson, David Chan, was interviewed by South China Morning Post. We subsequently prepared another press release about our views on establishing a registration system on signboards. Both press releases can be found in the following link: [http://www.hkis.org.hk/hkis/html/newsroom\\_press.jsp](http://www.hkis.org.hk/hkis/html/newsroom_press.jsp).

Recently, Vincent Ho was interviewed by ATV to express his views on environmental friendly construction materials and Ming Pao Daily News about the signboards which has induced light pollution.

May I take this opportunity to thank the hard work from spokespersons of the Division, council members and supporting group who have provided valuable input. It is anticipated our spokespersons will become more exposed to the media and I am sure they will upkeep their momentum in this aspect. A well-established link with the media will

facilitate our future communication and we can advocate our views about our profession in a more efficient manner. Members are encouraged to provide their views on specific topics related to the building surveying profession to council members so that we can start our preparation to establish our views before the issues become hot topics of the city.

### Views delivered to the Media

Here is an extract of media reporting of the views of our spokespersons:

HKIS welcomes the recent government proposal of providing a subsidy grant to the building owners for carrying out repair and maintenance works to their buildings announced in the Budget Speech. However, it would be more beneficial to the public if the application period could be relaxed beyond May 2009 so as to allow the owners more time to prepare for the application submission. We also urge the Government to consider extending the scheme beyond the proposed two-year period if the response to it by the public is encouraging. (Ming Pao Daily News, 26 February 2009)

The primary objective of the "Operation Building Bright" 樓宇更新大行動 is to create more employment opportunity for the construction industry. We wish the Government could flexibly widen the qualifying requirements of the old buildings under the new repair and maintenance grant scheme so that more building owners as well as building professionals and construction workers could be benefited. (Sing Tao Daily News, 27 February 2009)

In response to the signboard-removal operation to be undertaken by the Buildings Department following the budget announcement, we commented that many signboards had been installed without approval and the Government should set up a registration system, which was shelved in 2003, to resolve the problem in the long term. (South China Morning Post, 12 March 2009)

Large scale signboard with high level of illumination is becoming more common in Hong Kong. Nuisance due to excessive illumination or "light pollution" has been a matter of concern of the public not only from the daily living point of view but also from the perspective of environmental protection. The construction or erection of signboards is under the control of the Buildings Ordinance but primarily on the public and building safety issue. It would not be allowable or appropriate to control the "light problem" by way of the Buildings Ordinance. It may warrant for the Government to consider implementing a new set of statutory control over the "light pollution" problem if there is such a pressing need of the society. (Ming Pao Daily News, 16 March 2009)

### Interview by ATV for presentation in the TV programme "Money World"

Vincent Ho has presented views regarding the repair and maintenance needs for external walls and common reinforced concrete buildings in Hong Kong in an interview by ATV in the programme "Money World" shown on 8 March 2009. He also introduced the special considerations on the repair and improvement design for a historical building adaptive re-use project, which is the current talk of the town following the announcement of the award of the six adaptive re-use and conservation projects by the Government. He also highlighted the benefits on the use of environmental friendly or "green" materials in building repair or maintenance projects while remarking that the use of such materials is still not popular enough due to the limited variety of product choices and relatively high initial cost.

### Comments on recent building policies

The Technical Advisory Panel of BSD (the "TAP") and our representatives in the Building Sub-committee and the APSEC committee had offered comments on several proposals by the Government including the amendment to the Technical Memorandum of Supervision Plans to cater for the implementation of minor works control under the Buildings Ordinance, registration qualifications of the Approved Inspectors for MBIS and amendment to the PNAP on signboards construction.

### 拜訪廣東省建設廳

《取得內地註冊監理工程師資格的香港居民在粵註冊執業的試點管理辦法》（「管理辦法」）已於去年底出台，建築測量組得到廣東省建設監理協會龍建文會長和朱本祥秘書長的大力協助，就「管理辦法」執行上的具體安排與廣東省建設廳的負責官員於3月13日下午進行了深入的探討。

出席是次會議的有建築測量組前主席鄧海坤、上任主席黃來發、副主席梁志添、義務司庫李海達、理事何鉅業和增補理事李國華。中國建設監理協會副秘書長溫健先生特意從北京飛抵廣州出席會議，廣東省建設廳建築管理處副處長劉耿輝先生和廣東省建設執業資格註冊中心的代表在會上詳細解答了我們的提問。

就「管理辦法」中的「**申報註冊條件（二）**受聘於廣東省行政區域內一個經工商登記的具有建設類相關資質的單位」，其中

- 相關資質的單位乃指根據中華人民共和國建設部令第147號『註冊監理工程師管理規定』（第147號令）所包括的建設工程勘察、設計、施工、監理、招標代理、造價諮詢等單位；
- 受聘的型式容許非全職，亦不受申報註冊者在香港的聘用合約所影響。

雖然第147號令對「繼續教育」有着嚴格的規定，溫健副秘書長認為在執行上可於香港建築測量師取得內地註冊監理工程師資格三年期滿前（即2010年底前），再就具體要求和安排作詳細討論。

對於有意於廣東省開業的香港建築測量師，溫健副秘書長再次提醒我們要注意中華人民共和國建設部、中華人民共和國商務部令第155號「外商投資建設工程服務企業管理規定」和中華人民共和國建設部令第158號「工程監理企業資質管理規定」的內容，他認為我們應考慮受聘於廣東省的具甲級資質的工程監理企業，在註冊後可因應實際情況「分拆」另一所甲級資質的工程監理企業；我們也可考慮成立一所事務所同時申請註冊，以開展相應類別建設工程的項目管理、技術諮詢等業務。

### General Practice Division Chairman's Message



*Dr Lawrence Poon GPD Council Chairman*

#### CIREA Reciprocity Forum

A forum on the possibility of having another membership reciprocity arrangement with the China Institute of Real Estate Appraisers and Estate Agents (CIREA) was held on 19 March 2009. To kick off the forum, I briefed members on the background of the first reciprocity arrangement and the valuation practicing system in the Mainland. The common concerns raised by the members at the forum were the restrictions for HKIS members with CIREA membership to establish valuation firms in the Mainland, and the possible competition from CIREA members who obtained the HKIS qualification through the reciprocal arrangement. To assist the GPD Council to plan ahead for the subject issue, members are encouraged to express their views and concerns to the Council by e-mail at [info@hkis.org.hk](mailto:info@hkis.org.hk).



#### CPD Events

Two CPD events have been successfully held on 10 February and 26 February 2009 respectively. The first one on "Plant and Machinery Valuation Procedures" was delivered by Mr Mario Maninggo (Director, Plant & Machinery Valuation of CBRE). Mr Maninggo explained the general procedures and also touched on the valuation methods.



*Serena Lau, GPD CPD Convenor and Mario Maninggo*

The second CPD event on "Development Potential and the Buildings Ordinance", conducted by Professor Barnabas Chung attracted a full house of over 200 attendees. Professor Chung led members to examine this topic through a review of fundamental but important terminologies, rules and concepts.



*Serena Lau and Prof Barnabas Chung*

Both speakers further shared with us their experiences and observations during the Q&A session. The PowerPoint presentation and/or notes for the two events have been extracted and uploaded to the HKIS website at [http://www.hkis.org.hk/hkis/html/professional\\_cpd.jsp](http://www.hkis.org.hk/hkis/html/professional_cpd.jsp) for members' perusal.



## Land Surveying Division Chairman's Message



*Sung Hon Kwong LSD Council Chairman*

### Geomatics Conferences in 2009

It is an active year in terms of the number of survey conferences to be held in Asia and China. On 3-8 May 2009, the FIG Working Week will be held in Eilat, Israel, with the theme **"Surveyors Key Role in Accelerated Development"**. On 4-7 August 2009, the 10<sup>th</sup> South East Asian Survey Congress will be held in Bali, Indonesia. On 9-12 September 2009, the 6<sup>th</sup> International Symposium on Digital Earth will be held in Beijing. The 7<sup>th</sup> FIG Regional Conference will be held on 19-22 October 2009 in Hanoi, Vietnam with the theme **"Spatial Data Serving People: Land Governance and the Environment - Building the Capacity"**. The 6<sup>th</sup> Beijing, Hong Kong and Macao Geomatics Conference (第六屆京港澳測繪技術交流會) will be held in Beijing in November. The 6<sup>th</sup> Across-the-strait Geomatics Conference (第六屆海峽兩岸測繪發展研討會) is scheduled for this year but the actual date of Conference has not been fixed yet. With so many conferences ahead of us, LS members are advised to be prepared and to participate in some of these events to keep themselves abreast of the development in the geomatics world.

### Forthcoming CPDs

A number of CPDs are being arranged but the exact dates have yet to be confirmed. One of the CPDs will be to visit the Stonecutter's Bridge site again. The deck of the bridge should have been connected when we next visit it. The other CPD will be on the survey of the height of the Zhumulangma Feng (珠穆朗瑪峰) or the survey of the Sichuan area after the devastating earthquake there last year. The next Guangdong technical visit to Zhanjiang (湛江) is also to be arranged. As we have a busy schedule

of survey conferences in autumn and winter this year, the visit will probably be held early next year. So watch out for the relevant announcements to appear in Surveyors Times.

### FAQ on LSD APC Rules and Guide 2008

To allow members to have a clearer picture of the newly revised APC Rules and Guide, a set of Frequently Asked Questions has been prepared and uploaded to the website of LSD at the following link: [http://www.hkis.org.hk/hkis/html/LSD\\_APC\\_FAQ.jsp](http://www.hkis.org.hk/hkis/html/LSD_APC_FAQ.jsp) for general reference and information.



### Invitation

#### Construction Dispute Negotiation Experiment

Members of the HKIS are cordially invited to participate in an experiment on construction dispute negotiation. The experiment is part of a research project. The project is supported by the Research Grant Council of the HKSAR. The principal investigator is Dr. Sai On Cheung, Department of Building and Construction, City University of Hong Kong.

The research aims to investigate, among other objectives, the relationship between the orientation and behavior of construction dispute negotiators. Through the experiment, participants may understand more about their negotiation style. Subject to the approval of their supervisors, completion of the experiment may entitle the participants to 1½ CPD hours.

#### Particulars of the experiment:

**Time:** Between 1st May 2009 to 31st August 2009 at a time to be agreed with the participants  
**Venue:** City University of Hong Kong  
**Duration:** Approximately 1½ Hours

#### Contact and further information

Miss Ronnie Chow  
 Tel: (852) 2194-2649  
 Email: [ronnie.chow@student.cityu.edu.hk](mailto:ronnie.chow@student.cityu.edu.hk)

As a token of thanks for helping with the research, participants completing the experiment will receive a shopping coupon of HK\$100



## Planning & Development Division Chairman's Message



Edwin Tsang PDD Council Chairman

### Professional Practice Panel

I have been nominated as a representative of HKIS to sit on the Planning Sub-Committee of the Land & Building Advisory Committee (LBAC) as from April 2009. In this connection, I have been invited to sit on the Professional Practice Panel of the GP Division so as to co-ordinate in matters of negotiation with Government Departments. You are welcome to raise planning issues if you have any.

### Membership Development

Two further members have been recommended by the P&D Membership Committee to the Board of Membership

in March for admission as P&D members through the multiple membership arrangement.

### CPD Events

A joint CPD visit with the GP Division to Guangzhou will be organised in conjunction with the Mainland Committee in early September 2009. We are now working on the details.

A CPD talk by Miss Fiona S Y Lung on Statutory Planning Law & Practice will be held on 3 June 2009 (Wednesday) at the HKIS Surveyors Learning Centre. Further details will be announced later.




### MSc/PgD in Project Management (Programme Code 04001) 項目管理 理學碩士學位/深造文憑 \* Year 2009 Intake

Applications are invited for admission in the 2009/2010 academic year for the taught postgraduate programme for relevant professionals.

#### Entrance Requirements

Bachelor's degree in relevant disciplines or the equivalent (including recognised professional qualifications); and preferably with 2-year relevant working experience.

#### Programme Features

- Three full-day workshops are provided for each core subject (normally during weekends, including Saturdays and Sundays).
  - Study Guides are provided for core-subjects.
  - Students must complete 10 subjects OR 7 subjects plus a dissertation.
  - Earn 30 credits for the MSc award and 21 credits for the PgD award.
  - Students can study on full-time (normally 1-yr.) or part-time (normally 2.5-yr) basis.
  - An entry scholarship for an applicant with good academic qualifications (Deadline for submission of application for scholarship consideration: 31 March 2009).
  - Two subjects below are included in the list of reimbursable courses for Continuing Education Fund (CEF). 
- Strategic Management; Managing People in Projects

#### Programme Accreditation

The programme is accredited by the CIOB and the RICS as meeting their academic requirements. MSc graduates can sit for the practical assessments after satisfying their experience requirements.

**Enquires:** Please contact Miss Queenie Wong  
Tel: 3400 3819 Email: [bssywong@inet.polyu.edu.hk](mailto:bssywong@inet.polyu.edu.hk)

**Online application website:** [www.polyu.edu.hk/study](http://www.polyu.edu.hk/study)

## Property & Facility Management Division Chairman's Message



Kenneth Chan Jor Kin PFMD Council Chairman

The research study commissioned by the Property and Facility Management Division last year has just been completed by the City University of Hong Kong. I would like to express my sincere thanks to those members who had helped with the researcher in collecting vital data for the study. The research report will be published in the near future. A similar research

study on office buildings is being carried out by the Hong Kong Polytechnic University. Members are urged to help with data collection when approached by the researcher Dr K K Lo.

Here is a summary report by our researcher Dr LEUNG Mei-yung for members' reference.

### Benchmarking of Maintenance and Management Fees for Residential Housing in Hong Kong

Mei-yung LEUNG<sup>1</sup>; Li WANG<sup>2</sup>

<sup>1</sup> Assistant Professor, Department of Building and Construction, City University of Hong Kong

<sup>2</sup> Student, Department of Building and Construction, City University of Hong Kong

In view of the diversity of the Property/Facility Management Companies in Hong Kong, there is a wide range of management fees being charged for different types of residential properties. Hence, it is difficult to identify and set a fair price so that the general public can make reference to or rely on. The Property and Facility Management Division of the Hong Kong Institute of Surveyors has entrusted the City University of Hong Kong to conduct a research on the benchmarking of the Management and Maintenance Fees for Residential Housing in Hong Kong.

As each property involves different variables such as the electrical supply system, landscaping, security, and the like, it is very difficult to identify and agree upon fair property/facility maintenance and management fees for different residential properties. This project aims to identify benchmarks for maintenance and management fees for residential buildings in HK in order to rationalise the practice. To achieve the desired project aim, the following major objectives are to be fulfilled:

(1) to identify major variables (property/facility components and estate backgrounds) influencing

the maintenance and management fees for residential buildings;

- (2) to determine the variation ranges of maintenance and management fees per GFA with respect to estate background information; and
- (3) to determine the variation ranges of expenses on the major property/facility components per GFA with respect to estate background information.

This study identified 20 top **property/facility components** affecting maintenance and management expenses; the major six PF components covering 88% of total expenses (see Figure 1). *To control and monitor maintenance and management expenses, it is suggested that property managers and owners concentrate mainly on these six PF components.*

- (1) the total sum of direct salary;
- (2) electricity supply costs;
- (3) security expenses;
- (4) electrical system repair and replacement;
- (5) cleaning expenses; and
- (6) lift maintenance costs.



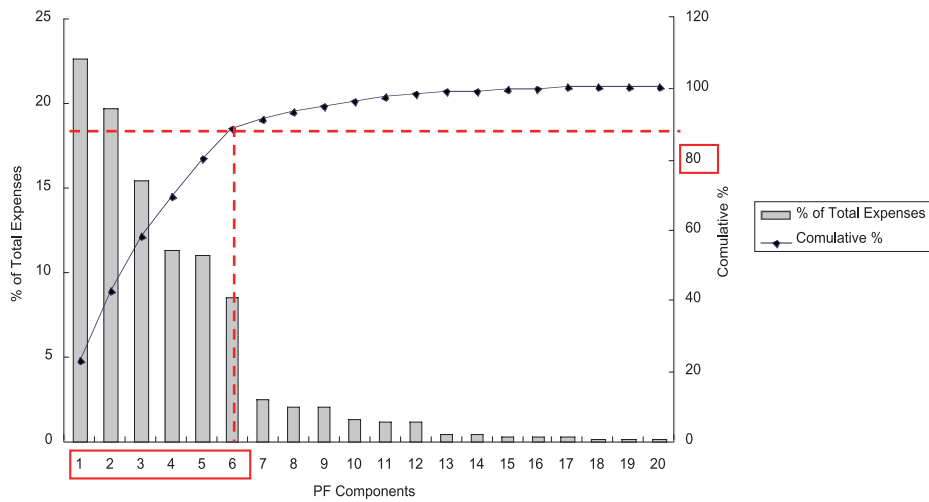


Figure 1 Chart for the Percentage of Total Expenses of Top 20 Property/Facility Components.

estate backgrounds are listed in Table 1. This study *recommends that the maintenance and management fee per square metre is set based on the range of estate backgrounds, including: GFA; total common area; total number of floors; number of dwelling units; individual unit size; and second-hand selling price.*

As an estate's background is well-known information at the beginning of property/facility management, the relationship between backgrounds, the expenses of property/facility components and maintenance and management fees can give property managers a basis for determining the management fee of a residential estate. The results of correlation analysis revealed no significant relationship between the maintenance and management fee and the building age/manager remuneration. However, the total maintenance and management fee was significantly and positively related to the *size of the estate* (e.g., gross floor area (GFA), total common area, total number of floors, and number of dwelling units). The maintenance and management fee per GFA was correlated with the *quality of the estate/building* (e.g., individual unit size and second-hand selling price).

Since estate background is related to the maintenance and management fee and the expenses of various PF components, the background information for estates/buildings in HK is considered to be a reference point for setting management fees. The mean value of the maintenance and management fee per GFA is \$14.4 per m<sup>2</sup>, ranging from \$8.6 (25<sup>th</sup> percentile) to \$20.6 (75<sup>th</sup> percentile), while the PF expenses per GFA range from \$3.5 to \$8.8 with a mean value of 7.1. The benchmarks of maintenance and management fees per GFA and the property/facility expenses per GFA with respect to different

Estate Background	Fee /GFA		Expense /GFA			
	Mean	Range	Mean	Range		
Overall	14.4	8.6 - 20.6	7.1	3.5-8.8		
<b>Size:</b>						
Gross floor area	<	10,000 m <sup>2</sup>	18.4	16.7 - 24.8	8.9	3.7-9.2
	≥	10,000 m <sup>2</sup>	11.8	7.5 - 15.2	6.0	2.3-7.0
Total common area	<	10,000 m <sup>2</sup>	21.0	16.1 - 27.5	8.2	3.7-9.2
	≥	10,000 m <sup>2</sup>	13.1	9.4 - 17.2	4.0	2.0-5.4
Total number of floors	<	30 no.	19.0	14.5 - 24.8	8.1	2.4-9.7
	≥	30 no.	10.6	4.5 - 15.1	6.4	4.1-7.5
Number of dwelling units	<	1000 no.	15.8	7.3 - 21.5	8.0	2.5-9.4
	≥	1000 no.	12.0	9.2 - 14.8	5.5	4.5-6.2
<b>Quality:</b>						
Individual unit size	<	100 m <sup>2</sup>	15.0	10.3 - 18.3	6.4	4.5-8.4
	≥	100 m <sup>2</sup>	22.6	16.3 - 29.0	12.4	3.5-21.8
Second-hand selling price	<	\$ 45,000 m <sup>2</sup>	10.2	7.4 - 12.3	7.9	4.7-9.8
	≥	\$ 45,000 m <sup>2</sup>	17.9	12.4 - 22.3	8.3	3.5-9.6

Note: - The two values in ranges are the 25<sup>th</sup> percentile and the 75<sup>th</sup> percentile respectively.  
 - Italic **Data** in bold represents the ranges between the two groups in the same background are clearly defined.

Table 1 Benchmarks of Maintenance and Management Fees and PF Monthly Expenses per GFA with respect to Different Estate Backgrounds

However, there is no clear demarcation of the total expense ranges of the PF components per GFA between any two groups within the 6 estate backgrounds (see Table 1). The study, thus, *revealed that estate background information is not a good indicator of total PF expenses per GFA.*

To develop a comprehensive benchmarking system for the maintenance and management fees of residential estates/buildings, it is strongly recommended that more data be collected and the data be further analysed with a combination of various estate/building backgrounds. The satisfaction of end users could also be considered in the overall study. The current study, however, has established a good platform for a large-scale survey in the next stage of setting an applicable benchmarking index in the industry.

# Summary of HKIS CPD / PQSL Events

17 Apr - 21 Jul 2009

DATE	CODE	EVENT	CPD HOUR(S)	SPEAKERS	RUN BY
17 Apr	2009023	A Review on Licensing Mechanism of Club in Hong Kong	1.5	Kenny Tse Chi Kin	YSG
22 Apr	2009027	The Purposes and Practice of Construction Insurance	1.5	Adrian King	YSG
23 Apr	2009028	HKSAR Conditions of Contract for Civil Engineering Works - Practical use of Important Clauses	2	David Leung	QSD
27 Apr	2009031	Building Information Modeling – A Revolution in Building and Construction	1.5	Elvis Li	BSD
30 Apr	2009029	Special Conditions of Contract for Mega Engineering Projects	1.5	David Leung	QSD
05 May	2009032	Facility Manager or Asset Manager? – a view on asset management	1.5	Alan Martin	PFMD
13 May	2009026	Green Series - Introduction to LEED-NC (New Construction) and its application in practice	1.5	Shawn Dolley	YSG
18 May	2009035	Bond, Indemnity and Guarantee, and Warranty. Can you see the difference?	1.5	Cheung Kwok Kit	YSG
19 May	2009036	Do you know how to set the Maintenance and Management Fees for the Residential Housing?	1.5	Dr Leung Mei-yung	PFMD
21 May	2009039	The Concept of Construction Programming and an Introduction to Delay Analysis	1.5	D S Chan	QSD
23, 30 May 06, 13, 20 June	2009030	專業會話普通話課程		資深普通話導師	YSG
03 Jun	2009040	Planning Law and Practice in Hong Kong	1.5	Fiona Lung	PDD
04 Jun	2009041	Devil of “Common Areas”	1.5	James Kenneth K K Pong Gary M K Yeung	BSD
09 Jun	2009034	Green Series - Introduction to BEAM and its applications in practice	1.5	Ir David Yau	YSG
21 Jul	2009037	建築合同：損失索償之籌備及追討損失及開支的索償	1.5	黃正言	QSD

## STANDARD RESERVATION FORM

Event Date : \_\_\_\_\_ Event Code : \_\_\_\_\_  
Event Name : \_\_\_\_\_

### Member details

Surname : \_\_\_\_\_ Other names : \_\_\_\_\_

Grade of membership\* : F  M  TA  P  TT  S  HKIS No. : \_\_\_\_\_

Division\* : BS  GP  LS  PD  PFM  QS

Postal address (only to be completed if the address is different from your membership record details):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Tel no. : \_\_\_\_\_ Fax no. : \_\_\_\_\_ E-mail : \_\_\_\_\_

### Payment method

I enclose a cheque payable to **"Surveyors Services Ltd"**. Cheque no. \_\_\_\_\_ Amount HK\$ \_\_\_\_\_

Please charge my HKIS Titanium MasterCard/Visa Platinum Card (Shanghai Commercial Bank Limited)

Please charge my American Express card

Ref.: [\_\_\_\_]

### To: Credit Card Service Department

I would like to pay the reservation fee HK\$ \_\_\_\_\_ to Surveyors Services Limited by charging my HKIS Credit Card account as follows:

Cardholder Name : \_\_\_\_\_ HKIS No. : \_\_\_\_\_

Card Number :     -     -     -     Expiry Date : \_\_\_\_\_

Cardholder's Signature : \_\_\_\_\_ Date : \_\_\_\_\_ / \_\_\_\_\_

**For Bank Use Only**

Approved by :

Date:

### Notes

- 1 A separate reservation form is required for each event / application. Photocopies of the form are acceptable.
- 2 Reservations should be returned by post/ by hand to the HKIS office.
- 3 Payment can be made by cheque or by HKIS Credit Card (Shanghai Commercial Bank Ltd./American Express)
- 4 A **separate** cheque or HKIS Credit Card payment instruction form is required for each event / application.
- 5 Reservation by fax, telephone and cash payment is not acceptable.
- 6 For number of seats or priority of allocation of seats, please refer to the individual event details.
- 7 Reservation cannot be confirmed until one week prior to the event.
- 8 An official receipt/ admission ticket, which must be presented at the event, will be returned by post upon confirmation of reservation.
- 9 Incomplete or wrongly completed reservation forms will not be processed.
- 10 In the event a Typhoon Signal No. 8 or above or Black Rainstorm Warning is hoisted, the event will be postponed and a new arrangement will be announced. Should the aforesaid warnings be lowered 4 hours before the event, the event will proceed as normal.
- 11 If you have not received any reply from our Institute within 7 days of the event, you may call HKIS at 2526 3679 to check the progress of your reservation.





## CPD/YSG/2009023

### A Review on Licensing Mechanism of Club in Hong Kong

**Speaker** Mr Kenny Tse Chi Kin  
BSc, MHKIS, MRICS, MHKIVM, RPS (BS & PFM), HKMC Accredited Mediator

Kenny is the Director of Raymond Chan Surveyors Limited and council member of BSD of HKIS. He is an experienced Building Surveyor and Project Management Surveyor with over 10 years professional experience in relation to licensed properties and A&A works in existing buildings.

**Date & Venue** 7:00 pm - 8:30 pm Friday 17 April 2009 SLC, HKIS

**Details** The seminar generally covers the following areas:-

- Introduction of Club License
- Examples of premises which club license is required
- Selection of appropriate premises
- Main concerns of respective licensing authority
- Common problems encountered and its solution

**Language** Cantonese supplemented by English      **Fee** HK\$100 for member, HK\$150 for non-member  
**Priority** First-come-first-served      (HK\$20 walk in surcharge for all pricings listed)

## CPD/YSG/2009027

### The Purposes and Practice of Construction Insurance

**Speaker** Mr Adrian King  
Senior Consultant, Energy and Construction, Aon Hong Kong Limited

Adrian King has 46 years experience as a professional insurance broker, the last 34 years in Hong Kong and the last 17 of those years concentrating on the insurance management of major projects. During this time he has been Aon's appointed Project Director on most of the major Owner Controlled Project Insurance Programs in Hong Kong including the New Airport Core Program and related transportation infrastructure including the Tsing Ma Bridge and five major new railway projects. Most recently, he was the Project Director for the Cyberport campus development project, the Hong Kong Disneyland Resort including two hotels, the major new Route 8 Highway including the Stonecutters Bridge, the Kowloon Southern Link Metro and the City of Dreams Casino Complex in Macau.

**Date & Venue** 7:00 pm - 8:30 pm Wednesday 22 April 2009 SLC, HKIS

**Details** Adrian's address will cover the types of insurance needed on construction projects and will examine the complexities and pitfalls which can arise if the policies are not properly or adequately issued. He will also examine the purpose of insurance, not only what it is but why it is needed and why contract insurance conditions must be written to reflect the particular and specific needs of each project rather than simply to apply a blind proforma in each case. Adrian's talk will include numerous examples of real case situations and claims which he has personally experienced.

**Language** English      **Fee** HK\$100 for member, HK\$150 for non-member  
**Priority** First-come-first-served      (HK\$20 walk in surcharge for all pricings listed)

## CPD/QSD/2009028

### HKSAR Conditions of Contract for Civil Engineering Works - Practical use of Important Clauses

**Speaker** Mr David Leung

# CPD/PQSL EVENTS

**Date & Venue** 7:00 pm - 9:00 pm Thursday 23 April 2009 SLC, HKIS

**Details** Mr David Leung has about 30 years experience working as a chartered civil engineer for various civil engineering projects. In the past ten years, he worked as a Contract Adviser in the Major Works Office of the Highways Department for Route 8, Deep Bay Links, Shenzhen Hong Kong Western Corridor etc. He has been lecturing and giving talks to several Institutes and the Construction Industry Training Council over ten years. David is also the sole author of the book "A practical approach to General Conditions of Contract for Civil Engineering Works".

Introduction to the HKSAR Conditions of Contract for Civil Engineering Works with emphasis on the practical use of various important clauses such as extension of time, care of the works and third party liability, works programme, re-rating due to changes in quantities and variation orders.

(attendees are advised to bring along a copy of the HKSAR Conditions of Contract for Civil Engineering Works 1999 Edition)

**Language** English

**Fee** HK\$120 for member

**Priority** QSD Members; First-come-first-served

## CPD/BSD/2009031

### Building Information Modeling – A Revolution in Building and Construction

**Speaker** Mr Elvis Li, MHKIBIM, Vice President of Tecton Limited

**Date & Venue** 7:00 pm – 8:30 pm Monday 27 April 2009 SLC, HKIS

**Details** Nowadays BIM is widely known as the creation and use of coordinated, consistent, computable information for the documentation of a building design, production of high-quality drawings, cost-estimates, construction planning and, eventually, for managing and operating the facility. It is an emerging technology embracing the entire building industry and project life cycle. However, how to create real business value that benefit to Real Estate and Construction Industry? The speaker – Mr Elvis Li will share with you his real project experiences in BIM from different perspectives in this event as well as the advanced understanding of the theory of this terminology.

As vice president for Tecton Limited, the leading BIM consultant in Hong Kong, Elvis manages more than 45 BIM projects in both China and Hong Kong, including virtual city, design and drawing auditing, 4D/5D construction simulations, BIM drawing production, mobile project monitoring and management, and BIM FM solutions. Prior to Tecton, he served as project manager for real-estate developers in Hong Kong and China.

**Language** Cantonese supplemented with English

**Fee** HK\$120 per person; HK\$150 per person for walk-in participants (subject to availability)

**Deadline** 20 April 2009

**Priority** 200. Priority is given to BSD members

## CPD/QSD/2009029

### Special Conditions of Contract for Mega Engineering Projects

**Speaker** Mr David Leung

**Date & Venue** 7:00 pm - 8:30 pm Thursday 30 April 2009 SLC, HKIS

**Details** Mr David Leung has about 30 years experience working as a chartered civil engineer for various civil engineering projects. In the past ten years, he worked as a Contract Adviser in the Major Works Office of the Highways Department for Route 8,

# CPD/PQSL EVENTS

Deep Bay Links, Shenzhen Hong Kong Western Corridor etc. He has been lecturing and giving talks to several Institutes and the Construction Industry Training Council over ten years. David is also the sole author of the book "A practical approach to General Conditions of Contract for Civil Engineering Works".

Introduction to special conditions of contract for mega projects which are modified from the previous Airport Core Projects Conditions of Contract. Explaining various clauses such as works programme, extension of time, liquidated damages and the term Stages and Key Dates.

(attendees are advised to bring along a copy of the HKSAR Conditions of Contract for Civil Engineering Works 1999 Edition)

Language	English	Fee	HK\$120 for member
Deadline	16 April 2009	Priority	QSD Members; First-come-first-served

## CPD/PFMD/2009032

### Facility Manager or Asset Manager? – a view on asset management



(Joint CPD Event with RICS FM Professional Group)

**Speaker** Mr Alan Martin BSC (Surv), MRICS

**Date & Venue** 7:00 pm – 8:30 pm Tuesday 5 May 2009 SLC, HKIS

**Details** Alan Martin, Executive Director and Founder of the Asset and Facilities Management services division within the Page Kirkland Group, has nearly 25 years experience providing property and construction related consulting services.

Alan started his career in the construction industry as a Chartered Quantity Surveyor before specializing in the provision of Asset and Facilities Management services over 13 years ago. His expertise spans all areas associated with assisting organizations improve the financial and physical management of their assets and facilities. This encompasses the high level strategic planning, operational management as well as the day to day support for service delivery.

Alan has worked in Australia, UK and The United Arab Emirates and has assisted many public, private and “not for profit” organizations. These organizations incorporate all property sectors including infrastructure, healthcare, aged care, education, retail, sport and leisure and commercial property.

Alan’s presentation addresses the strategic and operational components of asset and facilities management, in particular the need to align an organization’s Facilities and Assets to meet the business and community demands and expectations of tomorrow. Alan will also outline the development of asset and facilities market in Australia and how lessons can be learnt for the roll out of improved asset management practices for Government agencies and the private sector in Hong Kong. Specifically, this presentation will discuss:

- Key asset management issues
- Asset management trends
- How the Australia experience can assist the Hong Kong market
- Some practical tips on establishing appropriate assets management for your organization

Having recently established the provision of asset and facilities management services in the group’s Hong Kong office, Alan brings an Australian perspective to this important topic and outlines its relevance to the Hong Kong property market.

Language	English	Fee	HK\$120 per person
Deadline	20 April 2009	Priority	PFMD members





# CPD/PQSL EVENTS

the construction stage. Disputes related to these issues often arise, it is therefore important to distinguish between them. Mr. Cheung will cover the fundamental principles and significance of these critical elements. He will also share a number of legal cases and claims with us in the seminar.

<b>Language</b>	Cantonese supplemented by English	<b>Fee</b>	HK\$100 for member, HK\$150 for non-member (HK\$20 walk in surcharge for all pricings listed)
<b>Deadline</b>	4 May 2009	<b>Priority</b>	First-come-first-served

## CPD/PFMD/2009036

### Do you know how to set the Maintenance and Management Fees for the Residential Housing?



**Speaker** Dr Leung Mei-yung, Assistant Professor of City University of Hong Kong

**Date & Venue** 7:00 pm – 8:30 pm Tuesday 19 May 2009 SLC, HKIS

**Details** Dr Leung has more than fifteen years of practical/teaching experience in the construction industry/education and has participated in a number of prestigious construction projects in Hong Kong. Dr Leung is a Chartered Quantity Surveyor in the RICS in the UK and the HKIS in HK and a Chartered Builder in the CIOB in the UK and AIB in Australia. Her current interesting researches cover construction project management, value management, facility management, cost estimation and construction education. She has attracted over HK\$ 9.5 million as Investigator in professional and research grants in recent years, including a research project supported by the HKIS(PFM) in 2007-08. Over eighty refereed journal and conference papers in construction engineering and management have been published or accepted for publishing.

As each property involves different variables such as the electrical supply system, landscaping, security, and the like, it is very difficult to identify and agree upon fair property/facility (PF) maintenance and management fees for different residential properties. Therefore, the HKIS(PFM) supported a PFM research project in 2007-08 for identifying the benchmarks of maintenance and management fees for residential buildings in HK. The seminar will present the findings and recommend some suggestion for property and facility managers in Hong Kong.

<b>Language</b>	English mainly with Cantonese supplement if necessary		
<b>Fee</b>	HK\$150 per person (Each participant will get a copy of the booklet for these research findings)		
<b>Deadline</b>	4 May 2009	<b>Priority</b>	PFMD members

## CPD/QSD/2009039

### The Concept of Construction Programming and an Introduction to Delay Analysis



**Speaker** Mr D S Chan, Technical Director, MJ-Alpha Consultants Ltd. (A member of the MJ Group)

**Date & Venue** 7:00 pm – 8:30 pm Thursday 21 May 2009 SLC, HKIS

**Details** Mr Chan has gained considerable and wide-ranging experience in design, planning, construction, and management of major infrastructure and building projects through over 26 years participation in the industry. He has been engaged as the person-in-charge of planning and engineering of various major civil works contractors in Hong Kong and responsible for a variety of landmark projects within the territory including KCRC Kowloon Southern Link, KCRC West Rail, Infrastructure for Penny's Bay Development Contract and the Chek Lap Kok Airport infrastructures.

Mr Chan will share his experience on the concept of construction programming and illustrate the basic in the proper establishment of construction programmes. He will demonstrate the ability and importance of a well prepared programme as a powerful tool in project management. He will also introduce various delay analysis methodologies commonly used in dispute resolution.

Language	Cantonese supplemented by English	Fee	HK\$120 for member; HK\$150 for non member (HK\$20 walk in surcharge for all pricings listed)
Deadline	7 May 2009	Priority	QSD Members; First-come-first-served

## CPD/YSG/2009030

### 專業會話普通話課程

**導師** 資深普通話導師

**日期** 2009年5月23, 30日 及 6月6, 13, 20日 (星期六)

**時間** 下午2:00時至下午6:00時

**地點** 香港中環康樂廣場1號怡和大廈8樓815室測量師研習中心

**學習重點** 學習日常工作普通話會話、認識專業詞匯及用語，掌握普通話語音基礎；提升運用普通話的口語能力。

#### 課程內容

I. 專業會話課文部分	II. 普通話語音部分	III. 師生對話交流部分
1. 普通話禮貌用語、問候語	1. 音節結構、發音方法	1. 自我介紹、破冰對話
2. 時間、數字、測量單位	2. 香港人的語音難點	2. 普通話數字遊戲
3. 百家姓	3. 聲調、聲母 (一)	3. 香港人容易讀錯的姓氏
4. 日常工作普通話用語	4. 聲母 (二)、零聲母	4. 工作趣事分享
5. 專業建築相關詞匯及用語	5. 單韻母	5. 廣普對照 / 課程評估
6. 商務約會	6. 複韻母	6. 情境對話：商務約會
7. 專業產業相關詞匯及用語	7. 鼻韻母	7. 廣普對照、國內流行語
8. 商務應酬及禮儀	8. 「一」、「不」及三聲變調	8. 角色扮演、國內禮儀文化
9. 會議用語	9. 輕聲	9. 模擬會話練習 / 複習
10. 北京、上海、深圳 / 測試	10. 兒化	10. 課程總結 / 課程評估

**課程評估及測試** 期中及期末進行課程評估共2次；最後1小時進行普通話口語測試，測試及格獲頒香港專業普通話學校證書，證書費每張\$30。

\* 首兩位成績優秀的同學可各得《新華字典》一本

**語言** 普通話

**費用名額** 港幣\$1,000 (港幣\$1,500非會員)  
尚有少許名額

## CPD/PDD/2009040

### Planning Law and Practice in Hong Kong



**Speaker** Ms Fiona Lung, Chief Town Planner of Planning Department

**Date & Venue** 7:00 pm – 8:30 pm Wednesday 3 June 2009 SLC, HKIS

**Details** This briefing will give an overview of the planning law and practice in Hong Kong. The following areas will be covered :



- plan-making process
- planning application system
- power and function of the Town Planning Board and Town Planning Appeal Board
- enforcement against unauthorized development
- other related Ordinances

Language	Cantonese supplemented by English	Fee	HK\$100 per person
Deadline	20 May 2009	Priority	First-come-first-served

## CPD/BSG/2009041

### Devil of “Common Areas”



**Speakers** Mr James Kenneth K K Pong, FHKIS, FCI Arb.,  
Master of Corporate Governance (with distinction), MSc (Property Investment), Member of the Association of Building Engineers, Chartered Surveyor, Chartered Town Planner, Chartered Secretary, Authorized Person, Barrister

Mr Gary M K Yeung, BSc(Hon), LLB, MBA, Dip.Proj.Man., FHKIS, F.PFM, MRICS, MCI OB, MHKICM, ACI Arb

**Date & Venue** 7:00 pm – 8:30 pm Thursday 4 June 2009 SLC, HKIS

**Details** Many people perceive the term “common areas” as a collective noun describing the areas that are outside individual units of a building. If one carefully scrutinizes some old DMCs, one may realize that variations do exist. Moreover, common area of different natures may attract different legal and property management complications. The speakers will endeavour to explore the purview of “common areas” in light of the Building Management Ordinance Cap. 344 and some of the legal precedents such as I.O. of Cheong Wang & Cheong Wai Mansion v HKSARG (2000), Uniland Investment Enterprises Limited v I.O. of Sea View Estate & Guardian Property Mgt Ltd (1999), Jumbo King Ltd v Faithful Properties Ltd & Other (1999) and a recent Lands Tribunal case Chi Fu Fa Yuen Ltd v Cho Wai Man, Raymond (2007).

It will not be uncommon that there will be more than one kind of common area within a development and rights of some owners in using certain common area may be different from the others. The experience learned from “Growth Bright Ltd. v The Incorporated Owners of Grandview Building (2000)” will also be discussed.

Language	English	Fee	HK\$120 for member, HK\$200 for non-member (\$30 walk in surcharge for all pricings listed)
Deadline	20 May 2009	Priority	BSD Members; First-come-first served

## CPD/YSG/2009034

### Green Series - Introduction to BEAM and its applications in practice



(Jointly organized with BEAM Society)

**Speaker** Ir David Yau, BSc(Hons), MSc, CEng, FICE, FHKIVM, MHKIE, RPE

David is a chartered civil engineer with over 20 years experience in construction and project management. He is a Deputy General Manager in the Project Management (1) Department of Henderson Land Development Co Ltd. He is in charge of several projects in Guangzhou, Xi'an and Hong Kong.

David is an executive council member of BEAM Society, committee member of Association for Project Management and the past president of Hong Kong Institute of Value Management. He also sat in several steering committees in studies

conducted by BD and EMSD.

**Date & Venue** 7:00 pm – 8:30 pm Tuesday 9 June 2009 SLC, HKIS

**Details** The BEAM Society is the non-profit organisation that owns and operates, on a self-financing basis, the Building Environmental Assessment Method (BEAM). The society oversees the on-going development and implementation of BEAM standards for building assessment, performance improvement, certification and labelling. This is undertaken as an industry led, voluntary initiative to benefit the community.

As an executive council member of HK-BEAM, David will introduce the HK-BEAM Standard, its applications and benefits.

As a Deputy General Manager in the Project Management Department, David will share with members his experiences in obtaining BEAM certification and what benefits his company actually gained from BEAM Certification.

<b>Language</b>	English	<b>Fee</b>	HK\$100 for member, HK\$150 for non-member (HK\$20 walk in surcharge for all pricings listed)
<b>Deadline</b>	26 May 2009	<b>Priority</b>	First-come-first-served

## CPD/QSD/2009037

### 建築合同：損失索償之籌備及追討損失及開支的索償



**導師** 黃正言  
Mr Jeffrey Wong - B Construction Management and Economics, PgD(Const Law and Arb), AAIQS, MHKIS, RPS(QS), MCI Arb

**日期** 2009年7月21日  
**時間** 下午7時至8時30分 (星期二)  
**地點** 香港中環康樂廣場1號怡和大廈8樓811室測量師研習中心

**課程內容** 黃正言先生現任職為趙志敦·馬田·建造合約顧問有限公司的董事；過往10年參與澳洲及香港的建設項目及合約顧問事宜。他現為客戶提供專業顧問意見，商業及合約策略，申請延長建築期限及成本計算等工作。

內容提要：

- 普通法下索償的權利及合約下追討額外開支的權利
- 證明及敘述索償報告的技巧
- 提交通知及有關資料的需要
- 建築期延長及其它開支的索償
- 利潤的損失
- 追討利息的不同方法
- 計算方法：單息或複息？

<b>語言</b>	廣東話	<b>費用名額</b>	港幣\$120會員，港幣\$150非會員 (港幣\$20 附加費如未經報名人仕)
<b>截止日期</b>	2009年7月7日		工料測量組會員優先，先到先得

## Quantity Surveying Division Chairman's Message



Daniel Ho QSD Council Chairman

### Annual QSD Dinner

Subsequent to the notice in January's newsletter, I am now pleased to advise that the second QSD dinner will be held on 5 June 2009. The details will be available shortly. I would encourage you to mark in your diary this important event and to come and mingle with your learned friends.

### 2<sup>nd</sup> Batch of Qualification Recognition in Mainland

The survey form titled "Expression of Interest for Qualification Recognition" was issued in March 2009 to enquire about the members' interest to participate in the second batch of qualification recognition, if any, with CECA (China Engineering Cost Association 中國建設工程造價管理協會) in the Mainland. About 180 members expressed their interest to join. In view of the survey results, we will commence dialogue with CECA on this subject and will keep you informed of the progress.

### Certified Professional Surveyors

In December's newsletter, members were briefed about the views of the QSD Council on a survey regarding the specialized designations of Professional Surveyors.

On 2 March 2009, a forum on the proposal for Certified Professional Surveyors was organised by HKIS. The forum was attended by around 30 members, almost half of which were quantity surveyors.

It was explained in the forum that pursuant to clause 5.5 of the existing Constitution of HKIS, "a member in the Professional Grade may present himself as a Professional Surveyor", but could not be "professional [specialized area] surveyor". In order to highlight the area of expertise, the proposed change of the HKIS Constitution will allow surveyors to call themselves "Certified Professional Surveyor" or "Certified Professional [specialized area] Surveyor".

It was further explained that the first step would be to decide whether the word "Certified" should be added to the designation of the members, and the second step, to be considered later, to add the sub-divisional designations.

The key views of QSD members present in the forum and of the QSD Council on the proposal are summarized as follows:

1. The word "Certified" in UK is of a lower status than "Chartered".

It is better to use the current designation of "Registered Professional Surveyors" (RPS), which is recognised under the Ordinance. Methods should be explored to attract members to become RPS e.g. reducing the membership fee of HKIS by an amount equal to the registration fee of RPS.

2. The proposed sub-divisional designations will not raise the status of members but will lower it instead. The specialization of quantity surveyors is quite extensive. Should we call ourselves Certified Professional Surveyors of each specialization area such as Certified Professional Cost Planning Surveyors, Certified Professional Project Management Surveyors? It will be lengthy and clumsy to have all these designations in the name cards. If they call themselves Certified Professional Surveyors on some of the specialization areas, does it mean that they have only limited expertise? For those who prefer to call themselves Professional Surveyors or Registered Professional Surveyors, does it mean that they are incapable of delivering the services in their specialization?
3. The proposed sub-divisional designations will lead to confusion to the public. The public and the industry are already familiar with the services provided by quantity surveyors. How will the cross-division designations distinguish the specialization to be delivered by quantity surveyors from surveyors of other disciplines e.g. project management services?
4. The cross-division designations may also raise conflicts on which division should master the governance of the designation.
5. If there are too many designations, will the Institute provide enough CPDs for various disciplines and will members' experience and qualifications be verified prior to granting a specific designation? If it is based on an honest system, what is the credibility of such designation system?

The forum concluded that the survey results together with the comments obtained in the forum would be uploaded onto the website for members' information. An EGM would be arranged for members to decide whether to amend the Constitution so as to adopt the proposal of Certified Professional Surveyors and designations.

You are encouraged to express your views on the proposal and to join the EGM. Your particular attention is drawn to the clause 10.1 of the Constitution, which states that "This Constitution may be altered, amended or added to only by a resolution passed by a three-fourths majority of the Corporate Members present or by proxy and voting at a General Meeting of the Institute specially called for the purpose".



### Young Surveyors Group Chairman's Message



Joseph Chong YSG Committee Chairman

University graduates' training subsidised by the Government has recently become a hot topic in the City. Many are worried about the minimum salary offered by companies offering training to these graduates. However, the market is driven by supply and demand. Only those who can offer a reasonable salary can attract the right people to join their companies.

A reporter called me recently and asked whether surveying graduates would face difficulty in finding jobs. As surveying graduates are not oversupplied in this stagnant market I do not think there will be a major problem. The Government is now offering graduate trainee positions for surveying graduates with a salary at \$15,090 per month, which should be an attractive salary for graduates. This may help to set a reasonable benchmark for the private companies.

On the other hand, I have heard that many Hong Kong surveyors who are working in the UAE may lose their jobs soon because of their projects being canned. On 25 February 2009, we organised a free of charge CPD "Success in Surveying Career in an Uncertain Market" for our members. We believe that this kind of seminar, shared by a recruitment company, can update our members of the current job market.

### Dreams of Young People



On 28 February 2009, I was invited to attend an inauguration ceremony of the Hong Kong Youth & Tertiary Students Association (學協). They invited 3 guests of honour, including

the Honourable Chan Hak-kan Gary, who is the youngest member of the Legislative Council.

Gary Chan shared a story in the ceremony that he was jeered by friends when he told others he was going to propose to the Government to set up a national geopark at North-east New Territories. However, he did not give up his dream and in the end the Government accepted his proposal. He quoted a sentence from the Bible "Do not let anyone look down on you because you are young, but set an example for the believers in speech, in life, in love, in faith, and in purity." I love this quote very much as this is the true spirit of a young surveyor (reference link: [http://wenweipo.com/news\\_print.shtml?news\\_id=HK0903010015](http://wenweipo.com/news_print.shtml?news_id=HK0903010015)).

### HKU Surveying Alumni 30th Anniversary Annual Dinner



In order to maintain close ties with the university and its students, YSG sponsored some lucky draw gifts in the University of Hong Kong Surveying Alumni 30th Anniversary Annual Dinner. The guests of honour in this dinner were HKU's Vice-Chancellor Professor Lap-Chee Tsui and Professor A Walker. Our President Francis Leung was invited to the Dinner, and YSG committee members, Jeffrey Wong, Evangeline Chan, Joanna Kwok, Rex Ying, C W Tang and I also attended.

### YSG Putonghua Course

21 current and past YSG committee members are taking a Putonghua course, being held on Saturdays to brush up on their communication skills. This is indeed a good opportunity in preparing ourselves for future visits to the Mainland.



### Indoor Rowing

For the third consecutive year, YSG participated in the 30-minute Team Relay in the Hong Kong Open Indoor Rowing Championships & Charity Rowathon 2009, which was held on 15 March 2009 at the Kowloon Park Sports Centre. The team comprised our committee members and student representatives from HKU surveying and PolyU



LSGI. Ten of us had to row 3 minutes each. We were ranked 16 out of 26 teams and we had rowed 7,747 metres together!

I would like to express our gratitude to our committee member Carmen Wong for being our coach. Through this meaningful event, YSG donated HK\$600 to ORBIS for helping visually-impaired people.



More photos can be found on the back page.

### Call for helpers

If you are interested in joining YSG, please contact Ms Evangeline Chan, our Honorary Secretary today at email [evangeline@hkis.org.hk](mailto:evangeline@hkis.org.hk). You can also join our Facebook Group at <http://www.new.facebook.com/group.php?gid=4654184098> to understand more about us.

## Green Compass

To promote sustainability of the built environment and environmental friendly initiatives in our industry, we have lined up a group of YSG members to set up a sub-committee called "**GREEN COMPASS**".

The sub-committee aims to raise young members' awareness to the environmental issues and to promote "**Green**" through organising CPD or social events.

*Our coming events:*

### Green Series CPD

**13 May 2009** Introduction to **LEED-NC** and its application in practice  
**9 June 2009** Introduction to **HKBEAM**

**Let's support Green.**

*For members who are interested in joining our group, please send an email to [arthurysg@gmail.com](mailto:arthurysg@gmail.com).*

*We are looking forward to see you in our coming events.*





# EXPERT DETERMINATION AS A MEANS IN RESOLVING SURVEYING DISPUTES – HONG KONG PERSPECTIVE (PART I)

**Ricky K T Yu**

MHKIS, MRICS, MHKICM, MCI Arb, BSc(Hons)QS, MA Arb

This article contains 2 parts. This Part I introduces the common surveying disputes and expert determination mechanism. Part II consists of the analysis and conclusion of the questionnaire and interview information in order to determine whether expert determination should be further developed to resolve surveying disputes in Hong Kong.

## INTRODUCTION

Surveying is an essential element in the development of the environment. There are wide ranges of surveying activities such as town planning, defining land boundaries, property valuation, financial funding, building control, construction management, rent review, etc. Disputes are inevitable during the process of surveying activities. Litigation and arbitration were traditionally applied to resolve surveying disputes. H. Tang stated that the resolution of construction disputes (as well as other surveying disputes) can be expensive and time-consuming and hence encourages the development of alternative dispute resolution methods to overcome the problem.<sup>1</sup> Application of mediation may resolve the pitfalls but cannot offer a binding enforceable decision. Expert determination is in the middle position which maintains the benefit of mediation, i.e. quick, inexpensive, flexible and confidential, and could offer a binding and enforceable decision (see Table 1). Expert determination must be the future trend in resolving surveying disputes. However, there are still certain problems to be resolved. In order to provide platforms for its application, it is advised that (1) standard expert determination clause to be added to the principal contracts; (2) statutory expert determination to be implemented in resolving surveying disputes; (3) statutory dispute resolution mechanisms currently existed under the Town Planning Ordinance (Cap.131) and Building Ordinance (Cap. 123) to be adapted to include expert determination mechanism to resolve disputes; (4) relevant institutions to provide a structural training and accreditation system in expert determination; (5) relevant institutions to provide a code of practice for conducting expert determination in resolving surveying disputes; and (6) relevant institutions to provide an expert determination rule as a basis for conducting the expert determination. The promotion of expert determination in resolving surveying disputes is in the conceptual stage. It probably involves substantial changes of the existing legal framework. More consultation and investigation should be further carried out. This article aims at providing the starting point on examination of the feasibility in term of legal point of view as well as practical and procedural matters for the application of expert determination to resolve surveying disputes in Hong Kong.

Dispute Resolution Systems	Binding?	Due Process?
Litigation and Arbitration	Yes	Yes
Expert Determination	Yes	No
Mediation	No	No

Table 1 - Classification of Dispute Resolution Systems

## OBJECTIVES AND RESEARCH METHODOLOGY

Expert determination has, until recently, been limited to the applications for resolving rent review disputes, property valuation disputes, boundary disputes, construction disputes, etc. This article aims at determining further application of expert determination to all aspects of surveying disputes arising under a contract or even not under a contract (statutory expert determination). In addition, this article also focuses on its feasibility in term of legal and procedural matters to resolve surveying dispute in Hong Kong. Questionnaires were distributed to investigate (1) the current means of resolution to different surveying disputes and (2) the surveying participants' preference factors when choosing dispute resolution methods in resolving different surveying disputes in Hong Kong. In addition, interviews with senior participants were conducted to investigate on the feasibility in term of legal view, practical situation and procedural matters regarding whether expert determination is an effective means of resolving surveying dispute in Hong Kong.

## COMMON SURVEYING DISPUTES IN HONG KONG

For the purpose of this article, different disciplines such as land surveying, general practice surveying, quantity surveying, building surveying, etc. are not exactly demarcated and should be considered interchangeable. The term 'surveying disputes' referred is not rigidly defined as disputes purely related to surveying affairs. The term is broadly apparent to consider the disputes that surveyors always involved in. Other professions may also involve in the defined surveying disputes.

### Town Planning and Property Development Disputes

Town planning aims to promote the health, safety, convenience and general welfare of the community through the process of guiding and controlling the development and use of land and to bring about a better organized, efficient and desirable place to live and work. The Town Planning Board<sup>2</sup> is the statutory body involved in the formulation of planning, lands, housing, environmental and other development policies. A private property developer's planning on the use of their land would be affected by town planning policies. Potential disputes may arise where the property developer disagree with a decision of the Town Planning Board. The private property developer may submit planning objection

<sup>1</sup> H. Tang (2001), Construction for Excellence: Report of the Construction Industry Review Committee, p.5.

<sup>2</sup> Section 2 of the Town Planning Ordinance (Cap. 131).



to the gazetted town plan to safeguard its own interests. The Town Planning Appeal Board is an independent statutory body<sup>3</sup> to deal with the applicant's appeal on the decision of Town Planning Board.

### Boundary Disputes

Accurately identifying the boundary between two properties often requires specialist knowledge. The common boundary disputes include encroachments such as fences or buildings that cross over a neighbour's property line, improvements such as add on structures or landscaping that are incompatible with the use and enjoyment of a neighbour's property, roadways or trails which cross over a neighbour's property, incompatible uses which rise to the level of a nuisance, etc. A surveyor will not only survey the land, check deeds and the plans attached to them, but will refer to historical documents and aerial photographs.

### Property Valuations Disputes

Property valuations disputes always arise for rating appeals, compensation claims, premium of extension or amendment on the terms of leasehold and other civil disputes. In Hong Kong, except the land of St. John Cathedral all other property tenures are in the form of leasehold. A lease is a legal estate can be bought and sold on the open market. Until the end of the lease period, the leaseholder has the right to remain in occupation as an assured tenant paying an agreed rent to the owner. Terms of the agreement are contained in a lease, which has elements of contract and property law intertwined. The leaseholder is required to pay additional premium under two situations, i.e. extension of the leasehold and modification of terms in the lease. Leasehold valuation disputes may arise between the government and leaseholder where the above-mentioned two situations occur.

### Building Control Disputes

Building control aims at setting and enforcing safety, health and environmental standards for buildings. Buildings Department is a statutory body which promotes the built environment safe and healthy for our community. Buildings Ordinance<sup>4</sup> makes provision for rendering safe of dangerous buildings and empowers the Buildings Authority to provide overall control on the planning, design and construction of building. The property developer should make statutory submission such as General Building Plan for seeking consents or approval from the Building Authority before commencement of building works. Potential disputes regarding building control may arise where the developer disagree with a decision of the Buildings Authority. The Appeal Tribunal Panel<sup>5</sup> which is directly appointed by the Chief Executive shall deal with the applicant's appeal on the decision of the Building Authority.

### Financial Funding Agreement Disputes

Financial funding is being provided to a property developer by the financial company which may contain triggers on the issue of the certificate of practical completion as precedence of the financial company's obligations to provide the next portion of funds for the property development. Disputes may arise where the property developer and the financial company cannot reach a mutual agreement on whether the certificate of practical completion according to the financial funding agreement has been achieved.

### Construction Disputes

Construction industry is an industry with plenty of potential disputes. Construction disputes include, but not limited to, disputes on setting out, amounts of interim or final certificate, assessment of extension of time and loss and/or expense claims, assessment of variations claims, breach of construction contract obligations such as contractor's obligation to make submission or consultants' obligation to provide timely information or approval, disputes on defect liabilities, etc.

### Rent Review Disputes

Rent review is a procedure enabling an owner and a tenant to revise the amount of the rent payable under the terms of their lease to reflect changes in rental levels of the current market. For instance, a lease for a term of 15 years contains a covenant by the tenant to pay the rent under the lease. The covenant provides the amount of the rent payable for the first five years. For each of the two succeeding periods of five years, the covenant provides a rent review mechanism of the lease. The mechanism provides that the owner and the tenant can agree on the rent for the succeeding periods of five years. If the parties fail to agree on the new rent, the dispute is referred to a third party who shall determine the rent with reference to the market situation.

## EXPERT

The definition of 'expert' in this article is *'someone widely recognized as a reliable source of technical or skill whose faculty for judging or deciding rightly, justly, or wisely is accorded authority and status by the public or their peers. An expert, more generally, is a person with extensive knowledge or ability in a particular area of study. An expert can be, by virtue of training, education, profession, publication or experience, believed to have special knowledge of a subject beyond that of the average person, sufficient that others may officially and legally rely upon the individual's opinion.'*<sup>6</sup> Expert is always involved in the dispute resolution process nowadays. On one hand, expert can be appointed to determine a dispute according to the authority or the status (i.e. expert determination). On the other hand, expert can be appointed to give expert evidence in litigation or arbitration to express their independent expert opinion (i.e. expert witness). In this article, only expert determination will be focused.

## EXPERT DETERMINATION

The definition of expert determination in this article is a means by which the parties to a contract jointly instruct an expert or an expert appointed by statutory to decide an issue (or a dispute). In Hong Kong, expert determination is widely applied to resolve rent review disputes, boundary disputes, valuation of leasehold, etc. The adjudication, a form of adaptation of expert determination is found in certain largest civil

<sup>3</sup> Section 17A of the Town Planning Ordinance (Cap. 131).

<sup>4</sup> Building Ordinance (Cap. 123).

<sup>5</sup> Section 45 of the Buildings Ordinance (Cap. 123).

<sup>6</sup> Refer Wikipedia, the free encyclopedia available at <http://en.wikipedia.org/wiki/Expert> (visited 6 June 2007).





engineering infrastructure development to resolve construction disputes in Hong Kong.<sup>7</sup>

### Expert Determination v Arbitration

It is crucial to distinguish expert determination from arbitration because it is two similar but different operational systems. The principle is to consider the intentions of the parties on making the agreement. Lord Wheatley set out the modern law in distinguishing an expert from an arbitrator<sup>8</sup>. Firstly, it is determined by whether there is a formulated dispute exists. For instance, the referee acts as a valuer in the rent review case, is preventing disputes rather than resolving disputes. The court adopted the argument of a referee acting as a valuer in order to preventing disputes as an expert<sup>9</sup>. In contrast, arbitration cannot be started without a formulated dispute. However, once a formulated dispute arises, arbitration must not be the sole means to resolve the dispute. Expert determination can be adopted to resolve disputes<sup>10</sup> as well as to prevent disputes. Secondly, it is not the function of an arbitrator to use his/her own expertise, even the arbitrator equipped such kinds of expertise to determine the case. An arbitrator should observe natural justice. Natural justice must not only be done but also be seen to be done. Where the arbitrator is failure to observe natural justice, their awards must be set aside. In contrast, an expert is obliged to exercise his/her right to investigate the case and make decision by his/her own expertise. Thirdly, if presentation of evidences and submissions are not required in the proceeding, it must be not an arbitral proceeding. Lastly, in expert determination, parties agreed to accept the referee's decision as binding and final. The agreement is always expressed in the expert determination clause. In arbitration, the award is statutory binding and final<sup>11</sup>.

### Expert Determination Clause

The machinery of expert determination arises out of a contract. If the parties entered into a principal contract would prefer their future disputes arising out of the principal contract to be resolved in the machinery of expert determination, an expert determination clause must be specified in the body of the principal contract. Terms will be implied in the expert determination clause if it is necessary to give efficacy to the clause<sup>12</sup>, or if the term would have been accepted by both parties when making the clause which is obvious and necessary but unexpressed in the clause<sup>13</sup>. In arbitration, the arbitration clause is capable of surviving to resolve relevant disputes arising out of the principal contract even the principal contract has been terminated or is alleged to be illegal or void<sup>14</sup>. It is likely that this doctrine is applicable in respect of the parties' autonomy for choosing expert determination.

### Jurisdiction of the Expert in Expert Determination

The dispute to be determined by, the task of the expert in and the manner to conduct for the expert determination are the crucial issues affecting the jurisdiction. If there is ambiguity and uncertainty, it could prevent the enforcement and operation of the expert determination clause. Upon the appointment of the expert, one of the parties may raise out the issue of the expert's jurisdiction. The expert may independently rule on his own jurisdiction raised by one of the parties in the proximity

of the arbitration<sup>15</sup>. The expert if in their discretion considered necessary can seek legal advice for making decision.

### Identity and Qualifications of an Expert in Expert Determination

The identity and qualifications of an expert are always established by the parties in the expert determination clause. On one hand, an expert determination clause without detailing the suitably qualifications and requirements of the expert would probably provide unnecessary argument. On the other hand, if the availability of the expert can be eligible is too narrow to be appointed, it results in the expert determination clause defeating its own object, with no expert appointed.

### Rights and Duties of Expert in Expert Determination

There is no specific procedure to control by the courts of the matter of expert's fees and expenses in expert determination. The expert determination clause may lay down that the parties are to be responsible for the fees and expenses of the expert in equal shares or according to certain proportion. However, the clause itself should not be sufficient to establish the entitlement of the fees and expenses unless its terms are explicitly incorporated into the expert appointment contract. An expert who does not make sure the issues of fees and expenses, if the issues subsequently disputed, should be sue to the court both in his own burden of proof to establish the fact of the debt either in the contract or *quantum meruit* bases and to justify the amount.

### Appointing an Expert in Expert Determination

It is universal true that parties in dispute are difficult to make agreement so that it is crucial to expressly state in the expert determination clause that the appointment of expert should be made by an independent appointing authority in case of the parties' failure to agree the appointment. The independent appointing authority is always a professional institute relating to the kinds of the disputes. Unlike arbitrators which may be appointed by HKIAC<sup>16</sup>, there is no effective power to appoint experts. Expert determination may be put to a deadlock if one of the parties neglects to appoint the expert and the expert determination clauses providing appointment of experts by each party who would then refer the disputes to an independent umpire. This may overcome by adding a provision that other party's expert decision is binding in this situation.

<sup>7</sup> In Hong Kong, adjudication is firstly introduced in Airport Core Programme (ACP) in early 1990's.

<sup>8</sup> *Arenson v. Casson Beckman Rutley & Co.* (1977) A.C. 405.

<sup>9</sup> *Mayers v. Dlugash* (1994) 1 H.K.C. 755, Kaplan J.

<sup>10</sup> *North Eastern Cooperative Society Ltd v. Newcastle upon Tyne City Council* (1987) 1 E.G.L.R. 142.

<sup>11</sup> Section 18 of Arbitration Ordinance (Cap.341).

<sup>12</sup> *Moorcock* (1889) 14 P.D. 64.

<sup>13</sup> *Shirlaw v. Southern Foundries (1926) Ltd* [1939] 2 K.B. 206.

<sup>14</sup> Doctrine of separability.

<sup>15</sup> *Kompetenz Kompetenz*.

<sup>16</sup> Section 12 of Arbitration Ordinance (Cap.341).



### Expert Determination Rules

The application of the expert determination rules can fill in the gaps of the expert determination clause and ensure the expert determination clause to be operated and enforced. IAMA<sup>17</sup> and WIPO<sup>18</sup> provide comprehensive expert determination rules which govern the following issues.

- Due date of payment of the amount determined;
- Expert's power to award interest;
- Provision for interest for late payment;
- Costs award;
- Provision of interests for late payment;
- Fees of the expert;
- Procedure for expert determination;
- Provision prohibiting court applications;
- Provision giving the expert immunity;
- Time bars.

### Procedures in Expert Determination

#### Stop Running the Limitation Period

Unlike arbitration, the parties in expert determination cannot apply to extend the bar of the limitation period and any contractual time bar for the consideration of the arbitrator. The party, if considering necessary, must enter into an agreement to extend the limitation period or any contractual time bar to make the expert's decision enforceable.

#### Procedures laid down in Expert Determination Clause

Unlike arbitration procedures are under the supervision of the court, the expert determination clause is the sole document likely to have laid down the procedures to conduct the expert determination. Setting out the procedures in detail might help to process the expert determination smoothly. The court may assist in deciding issues of the construction of expert clauses before, during and after a reference. The court may also grant an injunction to stop a reference being conducted on the wrong basis. However, the issues before the court are usually limited to the interpretation of the words of the expert determination clause or the principal contract.

#### No Procedures laid down in Expert Determination Clause

Generally, the expert determination clause does not mention the procedures conducting the expert determination. In this circumstance, procedures are usually discussed between the expert and the parties. If the parties agree on the procedures but the expert does not, it is advisable to appoint another expert.

#### Terms of Reference

Basically, any matters which are not covered in the expert determination clause should be dealt with in the terms of reference. The starting point is the document leading up to the expert's determining of the issue. Terms of reference can go further resulting as discussing the expert's jurisdiction, fees and costs of expert, etc.

### Procedural Directions

Procedure direction should include provision specifying the time frame of procedures from submission to the publication of expert decision. It should also specify whether reasoning should be given to explain the expert decision. However, if the time frame is too strict, it may be practically impossible to achieve and it may be in favour of the party who would refuse to accept the decision on this ground. If it is silence in this issue, the expert should have an implied duty to deliver his decision within a reasonable time. It is not usually expressed in the expert determination clause that the parties have the duties or the rights to make submissions or representations to the expert. However, it is probably such duties or rights are implied which are also the expert's preference. However, there are different views in whether the submissions of parties are to be exchanged simultaneously or one party's submission following the other's. It is usually that each party sends a copy of their submission to the other party but in certain cases, parties may wish their submission to the expert confidential to the other party. This depends on the agreement on the procedures. However, the expert should be extremely careful that if one of the parties disagrees to confidential submission, the expert should keep other party informed for the submission otherwise the expert may run at the risk of being in improper collusion between the expert and the other party. The procedure adopted in expert determination is advisable and usually, although not compulsory, to be an inquisitorial procedure which means the expert frees to initiate line of investigation with or without the involvement of the parties. Adversarial procedure is not advisable in expert determination because it is a time and cost consuming process. If one of the parties fails to comply with the expert's direction, the expert is obliged and has the right to continue proceeding to reach his determination. This right and duty, even not expressed, should be implied in the expert determination clause. However, it is a good practice that the expert warns the defaulting party before he proceeds to the next step. Where one of the parties refuses to comply with a procedural direction made by the expert, the court may make an order requesting the defaulting party to comply the direction.

### Conduct of Investigation

Parties adopt expert determination prefer an informal procedure to resolve the dispute. The expert may hear the parties' cases without the presence of any legal representatives in order to understand both parties' point of views in a comparable in a time and cost consuming manner. The procedures would be flexible. It is important that the expert as well as the parties is clear to the expert's role in conducting the expert investigation. The expert is required to conduct impartially when he conducts independent investigation. Unless the parties provide sufficient submissions to the parties or expressly stipulated in the expert determination clause to prohibit the expert to conduct investigation, the expert can pursue independent investigation at his discretion.

### Expert's Decision

The decision making process depends on the information provided and

<sup>17</sup> IAMA stands for The Institute of Arbitrators and Mediators Australia.

<sup>18</sup> WIPO stands for World Intellectual Property Organization.



the application of expert's knowledge and experience in the particular expertise area. In reviewing the case, the expert should rely on his contractual right authorized in the expert determination agreement in the parties' mutual intention. If the parties intend to have reasoning for the expert determination, they should make an early agreement. If the expert does not agree with the parties to give reasons to his own determination, the court will not compel the expert to do so. The provision requesting the expert to give reasons is not popular as it leads uncertainty by giving grounds for challenge and more ammunition for negligence claims. Where the expert considers necessary, legal advice should be sought to reach the expert's decision. Before the expert need the external legal advice, the expert must seek the parties' agreement to the principle and the cost of the external legal advice. The expert's decision is usually in the form of a letter which should set out but not conclusive the followings:-

- The name of the expert;
- The names of the parties;
- The issues to be determined;
- The principal contract and the expert determination clause;
- The manner by which the expert was appointed;
- The terms of reference;
- The procedural directions;
- Compliance or otherwise by the parties with those directions;
- The expert determination/decision;
- The reasons;
- The principal amount of money to be transferred from one party to another, if any;
- The interest, if any;
- The fees and expenses;
- Any other costs dispositions;
- Signed and dated the expert determination/decision and sent to the parties, etc.

## Enforcing the Expert's Decision in Expert Determination

### Reason for seeking Enforcement

After an expert makes a decision, there will be fine if the parties agree, obey and execute the decision. Where there is a sanction for non-compliance by one of the parties, enforcement of the expert's decision becomes an issue.

### Enforceability

Unlike arbitration award, a decision of an expert is not reached through a judicial examination of a dispute and no statute provides the enforcement machinery. There is no direct authority that the expert's decision can be enforced in the same manner as an arbitration award.

### Court Action

Court action is necessary for the enforcement of an expert's decision unless the threat of insolvency can be used successfully. Non-compliance of the expert's decision is a breach of expert determination clause. The claimant should plead a contractual claim in this regard. The claimant may submit a contractual claim by summary judgment<sup>19</sup>.

If the claimant succeeds, the court gives judgment for the claimant with costs. If the defendant succeeds, the court may make various orders including allowing the defendant to defend the claim and the claimant's next opportunity to obtain judgment against the defendant is unlikely to arise before the end of a full trial.

### Insolvency

If a defaulting party under the expert's decision is obliged to make payment and fails to do so, the defaulting party may be served with a written demand. The defaulting party has to make payment within a specified period. If the defaulting party still fails to make payment after the expiry of the specified period, the party making the demand can present a bankruptcy or a winding-up petition against the defaulting party. If the defaulting party has a defence to the liability for the amount determined, the amount would be set aside and the party making the demand may be ordered to pay the costs of the insolvency proceeding. Alternatively, if the defaulting party has no defence, the insolvency proceeding is regarded as an effective means of enforcement of the expert's decision.

### International Enforcement

Unlike arbitration awards may be enforced in other countries<sup>20</sup>, there is no such international enforcement machinery provided for expert's decisions. In this regard, the parties should be careful before using expert determination in international contracts. There are two practical solutions to this problem which are to turn the expert's decision to a judgment or to adopt the framework of arbitration. The first method is to take court action and then turn the expert's decision into judgment. The judgment may then be enforced abroad through a treaty. The second method is that the issue of expert's decision to be referred by agreement to arbitration for the purpose of turning the expert's decision into a final arbitration award by consent.

### Limitation

The time limit for enforcing an expert's decision is basically under the limitation of a contract, i.e. six years for the principal contract referring to the expert is under hand and twelve years for the principal contract referring to the expert is under seal<sup>21</sup>. Besides, it is a fundamental difference from expert determination to litigation and arbitration proceedings that the starting of expert determination does not stop the clock running the limitation period unless there is an agreement to that.

## Challenging the Expert's Decision in Expert Determination

### Court Proceedings

If a party does not satisfy with the expert's decision, the party may challenge to the expert decision by making court proceedings between the parties as follows:-

<sup>19</sup> A decision made at an early stage in the action without a full trial.

<sup>20</sup> New York Convention 1958.

<sup>21</sup> Section 4 of Limitation Ordinance (Cap. 347).



- An application for an injunction to stop further performance of the contract which does not follow the expert's decision;
- An application for an order for specific performance so that the expert's decision can be put into effect;
- An application for summary judgment in order to enforce the decision;
- An application to strike out either parties' claim;
- An application to the court for a ruling on an allegedly ambiguous document, etc.

Apart from that the dissatisfied party may bring a claim against the expert by suing the expert for negligence rather than the expert's decision.

### Grounds for Challenge

Fraud, collusion, unfairness and mistakes are the major grounds for challenging the expert's decision in expert determination. However there may be other grounds for challenging the decision.

- The expert's decision may be invalid because the expert is not formally appointed;
- The court may refuse to enforce a decision which is unclear or inconclusive;
- The court does not enforce a decision which has an illegal purpose;
- The court sets aside a decision made by an expert who could not be appointed. For instance, the appointed party was liquidated;
- The court does not enforce a decision which is not made by the expert personally;
- In the cases the expert in knowledge after giving his decision that a clerical errors have been made, the decision can be corrected, etc.

### Fraud, Collusion and Partiality

Fraud, collusion and partiality are non-arguable valid reasons for refusal of upholding an expert's decision. Fraud and collusion are easily understood concepts. However, what constitutes partiality is more complicated. Partiality in this context generally requires actual bias or a real danger of injustice resulting from the alleged bias and not just conflict of interest or apparent lack of independence. Solely due to the grounds of conflict of interest or lack of independence does not provide ground for challenge unless the expert fails to act fairly or impartially. However, in cases where there is a conflict of interest or lack of independence, there is generally a greater willingness on the court to find that the expert's decision is invalid.

### Unfairness in Procedures

It is non-arguable that the procedures of expert determination should be fair. However, difficulties arise when a party challenges that the procedures of expert determination are unfair. In expert determination, the expert is not required to observe the golden rule in arbitration procedure, i.e. natural justice. There is no general objective standard of fairness to be applied in determination of the fairness of expert determination procedures. In each particular case, the terms of contract must be considered in order to decide whether the parties' intended standard of fairness has been achieved. Although it is not necessary to seriously observe the principle of natural justice in expert determination,

it is still highly advisable that communications between the expert and one of the parties without the knowledge of the other party should be avoided. Certain communications with one party alone may be unavoidable but if this is not the situation, the court may hold that the expert's decision cannot stand. It is a common justice that both parties should be given equal opportunity to present the case. However, it is doubtful whether a failure by an expert to follow this approach would be sufficient to invalidate the expert decision. The seriousness of the effect on the failure by the expert to give equal opportunity to present the case in the particular situation is likely to be the determining factor. The expert should act fairly but there is not necessary to bring the due process. Unlike arbitration, failure to bring the due process by an expert in expert determination does not set aside an expert's decision.

### Unfairness in Decision

In majority cases, the parties should abide by the expert's decision even unfairness may be found in the decision making process because the decision maker, i.e. the expert has been chosen by the parties in their autonomy. However, this guideline is not conclusive and the courts are more willing to hold the decision of an expert to be invalid on the ground of unfairness if the expert is the agent of one of the parties and the contract provides no machinery for review the decision.

### Mistake

In consideration of the law of mistake in expert determination, the parties' agreement to a decision shall be final and the injustice of enforcing a defective decision should be well balanced. After many years evolution of the law of mistake in expert determination, the present position gives a clearer picture in this issue<sup>22</sup>. An expert's decision cannot be challenged unless it could be shown that the expert had not performed the task assigned by the parties. If the expert follows the pre-agreed procedures to reach his decision even the expert go to the wrong way in his determination, the decision would still be binding. In contrast, if the expert does not follow the pre-agreed procedures to reach his decision, the decision would be void.

### Interpretation of Words in Expert Determination Clause

Interpretation of words in the expert determination clause is a matter of law. The question is whether this matter of law should be dealt with by the expert himself or by the intervention of the court. Traditionally, it is always adopted the view that the court had jurisdiction to decide the question of law. Subsequent precedence supports the expert should involve not only questions of fact but also determining the meaning of the words on the agreement<sup>23</sup>. However, the court will still intervene if the terms of the particular agreement and the circumstances in which it was made justify the inference that the parties intended that questions of interpretation and other points of law were to be determined exclusively by the court and not by the expert.

<sup>22</sup> Jones v Sherwood Computer Services plc (1992) 1 W.L.R. 277. follow by Macro v. Thompson (1997) 1 B.C.L.C.

<sup>23</sup> Jones v. Sherwood Computer Services plc (1992) 1 W.L.R. 277 and Norwich Union Life Assurance Society v. P&O Property Holdings Ltd (1993) 1 E.G.L.R. 1645.





# 兩地建設工程合同法律實務專欄

## 內地建設工程合同法律及其適用方法

郭靖華 FHKIS LLB(PRC)

在近幾年草擬香港和內地的工程合約及處理有關糾紛的過程中，我越來越深刻地感覺到，香港和內地有關建築工程方面的合作，無論從廣度還是深度上都愈加緊密。

香港十大基建專案正如火如荼地進行，其中有四項涉及了香港與內地的跨界基建工程（廣深港高速鐵路、港珠澳大橋、港深空港合作、港深共同開發河套）；於 2009 年 1 月起正式生效的《內地與香港關於建立更緊密經貿關係的安排》（CEPA）補充協議五進一步擴大了原有建築專業服務領域的內容，取消了外資建設工程設計企業在中國內地設立合資企業時內地合營者的出資總額不得低於註冊資本的四分之一的限制，同時放寬香港服務提供者的准入條件，增加香港專業人士參加內地服務市場的機會。由香港與內地愈加緊密的經貿合作趨勢可以看出，今後兩地在建築領域，尤其是大型基建方面有著不可忽視的發展前景，兩地的密切合作將大大促進中國建築行業的優勢互補，並加快建築領域往更成熟和深遠的方向發展。因此，如何充分瞭解兩地建築法律的有關規定，加強建築工程合同的法律管理以保證建築工程的規範化運行，就顯得尤為重要。

因此，總結整個合作團隊在建築工程領域長期的實務經驗後，我認為有必要開闢一個專欄，試從兩地有關規範建設工程合同的法律規定、建設工程合同法律的適用方法、建設工程合同的訂立注意事項、建築工程合同履行、建築工程糾紛解決等方面，勾勒兩地建設工程合同規範層面和實務層面的基本框架，力求闡釋建設工程合同管理的重要法律意義。這個專欄將會由我及我的助理陳靖（已通過中國國家司法考試）共同撰寫。本文首先介紹內地建設工程合同的法律及其適用問題。

### 一、內地建築法律規範

內地建築法律規範是由建築法律、行政法規、部門規章和地方規相結合的法律法規體系。法律層面，主要由《中華人民共和國合同法》及《最高人民法院關於適用〈中華人民共和國合同法〉若干問題的解釋（一）》進行規範，同時也適用《中華人民共和國民法通則》和《最高人民法院關於貫徹執行〈中華人民共和國民法通則〉若干問題的意見（試行）》；法規和規章層面，則對技術規範和標準制定、建築工程施工許可，從業資格，建設工程勘察設計、招標投標、發包承包等各方面都進行了詳細的規定。

根據法律效力的高低，內地建築方面的法律規範也有高位階和低位階之分。高低位階是指法律規範在法律體系中所處的地位高低，其概念是相對性的，它們並非特別對應某類或者某個法律規範，而是在比較兩類或兩個法律規範之後，法律效力高的，其位階就高，稱為上位法；法律效力相對較低的，其位階就低，稱為下位法。

不同位階的法律規範的適用的總原則是，上位法優先於下位法，下位法不得與上位法相抵觸。當然，相同位階的法律，適用特殊法優先於普通法原則。《中華人民共和國立法法》第五章還特別規定：1、憲法具有最高法律效力，一切法律、行政法規、地方性法規、自

治條例和單行條例、規章都不得與憲法相抵觸；2、法律的效力高於行政法規、地方性法規、規章；3、行政法規的效力高於地方性法規、規章；4、地方性法規的效力高於本地和下級地方政府規章。但是，由於法規規章規定繁多，操作複雜，有時甚至難以避免規定重複和自相矛盾的情況。因此，如何保證高位階的建築法律切實有效運行，並不斷精簡、完善低位階的建築法規規章，從而建立一個上下有序、和諧統一的建築法律體系，是建築行業發展過程中不可避免的問題。

### 二、內地建築工程合同的法律適用方法

《中華人民共和國合同法》及《最高人民法院關於適用〈中華人民共和國合同法〉若干問題的解釋（一）》屬於同等位階，對建築工程合同同等適用。《合同法》中除了總則的規定之外，在分則部分第十六章專門對建設工程合同進行了規定。這個問題上，合同法採用了從特殊到一般的規則，其中第 124 條規定：“分則或者其他法律沒有明文規定的合同，適用本法總則的規定，並可以參照本法分則或者其他法律最相類似的規定”。因此，第十六章建設工程合同部分優先於總則適用。

至於分則部分，幾類常見的合同由分則進行詳細規定，這些被稱為“有名合同”；分則沒有單獨進行規定的合同，通常稱為“無名合同”。合同法第 287 條採用了有名合同優先無名合同適用的原則，如果建設工程合同沒有規定的，適用最相似的有名合同，即承攬合同的有關規定。如果建設工程實踐中存在一些合同確實無法適用有名合同的規定的情況，那麼適用上述的從特殊到一般的規則，由合同法總則進行規範。

根據我們的經驗，上述內地建築法律規範及其適用方法，是進行實務操作的基本前提。當然，還有諸多複雜的適用規則，要根據建築工程所在地的不同規定而進行相應分析和補充。我相信，隨著內地與香港在建築服務領域合作的不斷加深，只有加強對內地建設工程合同管理的法律制度層面和操作層面的瞭解，才能避免在施工管理過程中出現法律上的重大疏忽，為切實保證當事人的利益和良好的合作關係提供基本的保障。

#### English Summary

Gilbert Kwok, FHKIS, LLB(PRC)

Four of the ten major infrastructure projects announced by the Chief Executive of the HKSAR Government in 2007 involve both Hong Kong and the Mainland China, namely Guangzhou-Shenzhen-Hong Kong Express Rail Link, Hong Kong-Zhuhai-Macao Bridge and corporations between Hong Kong and Shenzhen in the developments of Lok Ma Chau Loop and the link between the airports of the two cities. I would wish to start this column to explain to members of the Institute construction law and practice of Hong Kong and the Mainland China as I believe they may want to know more for them to handle those projects. This first article focuses on Mainland China construction law.



## How to strive for success in a surveying career in an uncertain market

**Katherine Wong**

*Young Surveyors Group Career Support Sub-committee*

Mr Chris Urban, the manager for property and construction at Michael Page International, a leading professional recruitment consultancy provided our YSG members the insights into the current employment situation with the impact of the global economic crisis on 25 February 2009.

Chris gave an overview on the global employment market especially in the Asia Pacific and Middle East; briefed about the employment outlook, particular in the construction and property market; as well as the salary trend in 2009. He also highlighted the essential elements that surveyors have to equip themselves with in the uncertain market for survival including upskilling, networking and diversification of current skill set. Finally, Chris further shared his viewpoint of exploration of other potential markets for surveyors.

In order to strengthen the career prospects, members were encouraged to seek more practical advice on the preparation

of CV and covering letter, potential interview questions & techniques and information on establishing a network of industry contacts from the website of Michael Page at <http://www.michaelpage.com.hk/ContentArticle/page/7256/title/Career-Advice.html>.



*YSG Chairman Joseph Chong and Chris Urban*

## The valuation of variations, what does the contract require?

**Kathy Cheung**

*Vice Chairman of CPD Sub-committee, Quantity Surveying Division*

A QSD CPD talk on the topic 'The valuation of variations, what does the contract require?' was held on 24 February 2009. We would like to give our thanks to the speaker Mr Michael Charlton, the Managing Director of Charlton Martin Consultants Limited and the Chairman of the Charlton Martin Group. Michael elaborated the meaning with practical examples regarding variation clauses in both the Hong Kong Government Conditions of Contract and the Private Form of Contract. The talk was a successful one, with around 124 members attending. At the end of the event, Mr Sunny Chan,

the Chairman of QSD CPD Sub-committee, presented a souvenir to Michael.



*Sunny Chan and Michael Charlton*





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# Construction Value Management



## CD Pack II

With the funding support of the Commerce and Economic Development Bureau of the Government of the Hong Kong Special Administrative Region, the *Hong Kong Institute of Value Management* has successfully co-organized with the *City University of Hong Kong* for a project entitled "**Improving Value Management (VM) Practice via International VM Study Process and Qualification System**" as an extension of the previous project named "Enhancement of Construction Value Management Professionalism for the New Generation" co-organized by the *City University of Hong Kong* and the *Hong Kong Institute of Surveyors* in 2003-05.

The current project aims to improve VM practice, including both study process and qualification system, for construction professionals in HK, so as to enhance the competitiveness of the construction professionals in a regional context. Through the project, a series of VM seminars and workshops, and a study to review the local and international study processes and qualification systems of VM practice were successfully conducted. To disseminate the fruitful results of the project, a VM website ( <http://bcm.cityu.edu.hk/newevents/newevent.php> ) and a "Construction VM CD Pack II" containing the information about all VM activities held has been produced.

Please search the website via <http://bcm.cityu.edu.hk/> or contact Ms Isabelle CHAN, City University of Hong Kong, by email: [isabelle@student.cityu.edu.hk](mailto:isabelle@student.cityu.edu.hk) for further information and details of coming VM courses or events.



"Any opinions, findings, conclusions or recommendations expressed in this material / any event organized under this Project do not reflect the views of the Government of the Hong Kong Special Administrative Region or the Vetting Committee for the Professional Services Development Assistance Scheme."

Co-Organizers:



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<b>2009</b>			
<b>Apr</b>	8-10	2009 Mainland and Hong Kong Construction Industry Forum	MOHURD & DEVB Chengdu, China
	23	HKIS Executive Committee meeting	HKIS Board Room, HKIS
	24	Surveyors Happy Hour	HKIS Library, HKIS
	25	World Association of Valuation Organisations Board Meeting	WAVO Singapore
	26	HKIS 25th Anniversary Birthday Party	HKIS American Club, Hong Kong SAR
<b>May</b>	3-8	FIG Working Week 2009	FIG Eilat, Israel
	21	HKIS Executive Committee meeting	HKIS Board Room, HKIS
	21	HKIS General Council meeting	HKIS Board Room, HKIS
	22	HKIS Diploma Presentation	HKIS Eaton Hotel, Hong Kong SAR
	29	Surveyors Happy Hour	HKIS Library, HKIS
<b>Jun</b>	25	HKIS Executive Committee meeting	HKIS Board Room, HKIS
	26	Surveyors Happy Hour	HKIS Library, HKIS
<b>Jul</b>	7	Board of Membership meeting	HKIS Board Room, HKIS
	23	HKIS Executive Committee meeting	HKIS Board Room, HKIS
	23	HKIS General Council meeting	HKIS Board Room, HKIS
	31	Surveyors Happy Hour	HKIS Library, HKIS
<b>Aug</b>	17-19	PAQS 13th Conference	PAQS Kuala Lumpur, Malaysia
	27	HKIS Executive Committee meeting	HKIS Board Room, HKIS
	28	Surveyors Happy Hour	HKIS Library, HKIS
<b>Sep</b>	24	HKIS Executive Committee meeting	HKIS Board Room, HKIS
	24	HKIS General Council meeting	HKIS Board Room, HKIS
	25	Surveyors Happy Hour	HKIS Library, HKIS
	26	HKIS Annual Conference	HKIS Conrad Hotel, Hong Kong SAR
<b>Oct</b>	22	HKIS Executive Committee meeting	HKIS Board Room, HKIS
	30	Surveyors Happy Hour	HKIS Library, HKIS
<b>Nov</b>	11	Board of Membership meeting	HKIS Board Room, HKIS
	26	HKIS Executive Committee meeting	HKIS Board Room, HKIS
	26	HKIS General Council meeting	HKIS Board Room, HKIS
	27	Surveyors Happy Hour	HKIS Library, HKIS
<b>Dec</b>	11	HKIS Annual General Meeting	HKIS SLC, HKIS
	18	Surveyors Happy Hour	HKIS Library, HKIS

For details, please visit [www.hkis.org.hk](http://www.hkis.org.hk) or contact the HKIS office on 2526 3679. Board Room, HKIS = 810 Jardine House, 1 Connaught Place, Central, Hong Kong. Library, HKIS = 801 Jardine House, 1 Connaught Place, Central, Hong Kong. SLC, HKIS = 811 Jardine House, 1 Connaught Place, Central, Hong Kong.





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