

# SURVEYING

VOLUME 2, ISSUE 10, OCTOBER 1993

## FROM THE EDITOR

With the Annual General Meeting a few days ago, the Institute enters another new year. We welcome, of course, the incoming Officers and Committee members and offer especial congratulations to Michael Mann as President for 1993/94. Full details of the new committee are in this issue. I should also offer many thanks to Joseph Lee, unsuccessful in the ballot for Junior Vice President. I hope Joseph will continue to support the Institute actively. We need Surveyors of his calibre promoting our profession.

Members at the AGM did raise the question of the Institute's (and, hence, the profession's) public image in Hong Kong, and it is obviously a matter of some concern to all of us. The premier Institute of the property profession in Hong Kong should, naturally, have a high reputation and standing in the public eye. I do not mean to disparage, for example, the Society of Hong Kong Real Estate Agents; but the principal voice in all matters relating to property should be the HKIS. Raising the profile of the Institute will be, I hope, a major objective of Mr Mann and his Committee. And in the long term, that is tied in with all the Institute's activities from education through to the Annual Dinner.

It is generally planned that, with effect from the Branch AGM later this year, the committees of Institute and Branch should all be wholly merged. That is a natural progression. There is not a great deal of time left before the Branch (if it continues) should become very clearly the junior partner. That is, I think, happening, but perhaps needs some acceleration. The parallel existence of two bodies for one profession is confusing to the public and, in the past, has caused some dissipation of resources. It is certain that the one representative body must be the Hong Kong Institute. Again, in all aspects and activities of the profession, that must be the Committee's objective.

So there is some hard thinking ahead, with strategic decisions for the next five to ten years needed. The strong Committee in place should, I hope, be able to lead that thinking, and I look forward to what I am sure will be an interesting debate.

## THE HONG KONG INSTITUTE OF SURVEYORS GENERAL COUNCIL FOR THE YEAR 1993/94

At the Annual General Meeting of the Institute the following members were elected to General Council for the year 1993/94 :-

President	: MICHAEL MANN
Senior Vice-President	: LEUNG CHUN YING
Junior Vice-President	: P C LAU
Hon. Treasurer	: MICHAEL TIBBATTS
Hon. Secretary	: PETER HART

## DIVISIONAL REPRESENTATIVES :

Building Surveyors	BARNABAS CHUNG DAVID CHAN SAMSON WONG
General Practice	STEPHEN YIP CHIU KAM KUEN DAVID FAULKNER
Land Surveyors	WONG THIEN NYEN TO CHI MING WINNIE SHIU
Quantity Surveyors	ANDY GORDON JOHN NELSON DEREK MACKAY

## THE HONG KONG INSTITUTE OF SURVEYORS ANNUAL SUBSCRIPTIONS AND ENTRANCE FEES

The following Resolution was PASSED at the Annual General Meeting :-

"That the following subscription and entrance fees shall be payable by corporate members and students of the Institute with effect from 1st April 1994".

	SUBSCRIPTION FEE	ENTRANCE FEE
Fellows	HK\$780-00	HK\$780-00
Associates	HK\$600-00	HK\$600-00
Students	HK\$170-00	HK\$170-00

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

Royal Institution of Chartered Surveyors  
Hong Kong Branch  
Chairman : John Peacock, FRICS, FHKIS

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

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

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

The Editor can be contacted through Surveyors Services Limited.

All advertisements and small ads are welcome. The income provided by advertisements contributes towards the printing cost of SURVEYING.

Further details and information on rates for other advertising may be obtained from the Administration Officer, Surveyors Services Ltd, 1934 Swire House, Chater Road, Hong Kong (Tel : 526 3679 Fax : 868 4612)



PUBLISHED BY SURVEYORS SERVICES LIMITED,  
THE JOINT OFFICE OF THE HONG KONG INSTITUTE OF SURVEYORS AND  
THE ROYAL INSTITUTION OF CHARTERED SURVEYORS, HONG KONG BRANCH.

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# DIVISIONS

## NEWS FROM THE LAND SURVEYORS BY WINNIE SHIU ANNUAL GENERAL MEETING, LAND SURVEYING DIVISION

The joint LSD HKIS and RICS (HK Branch) AGM was held on 13 September 1993. The following members were elected to serve the Council for the coming year.

Chairman (HKIS)	: MR T N WONG
(RICS HKB)	: MR K F YEUNG
Hon Secretary	: MS WINNIE SHIU
Hon Treasurer	: MR T M KOO
Member	: MR H K CHAN
	: MR K F CHU
	: MR K K SIN
	: MR C M TO
	: MR P C YICK
J.O. Representative Student	: MR M C SO
Representative	: MR CONRAD TANG
Hon Auditor (RICS HKB)	: MR WILLIE TANG
Hon Auditor (HKIS)	: MR LOU DIKAST

## DEGREE COURSE IN LAND SURVEYING

A Panel comprising eight members from the RICS will be visiting Hong Kong Polytechnic between 22-26 November this year for the purpose of assessing the suitability of four courses to be accredited by the RICS. One of the courses is the BSc Hons Degree in Surveying and Geo-Informatics.

## FROM THE GENERAL PRACTICE COMMITTEE BY DAVID FORSHAW

## RENTAL RECORDS OF RATING AND VALUATION DEPARTMENT

In an earlier issue of "Surveying" it was reported that the Joint General Practice Division Committee was investigating the means by which the rental records of the Rating and Valuation Department could be made available to professional surveyors. There are an increasing number of cases referred to the Lands Tribunal under Part IV of the Landlord and Tenant (Consolidation) Ordinance and it is imperative that the evidence before the Tribunal results in a decision that truly reflects the prevailing market rental.

Discussions with the Bar Association and Law Society resulted in a joint submission of the professional bodies to the Commissioner of Rating and Valuation requesting that the records of his Department be made available to professional advisers. Subsequently, representatives of the Committee met with the Commissioner who was sympathetic to the request and felt there was a need to make such information available. It will, however, be necessary to obtain policy approval and find ways of overcoming the confidentiality issue, particularly in relation to information on Form CR109. In order to take the matter forward the Commissioner has promised to seek the necessary approvals and discuss with the Lands Tribunal and the Attorney General. Assuming these problems can be overcome then the following procedures are likely to be implemented :-

- i) Rental information to be made available to the parties or their agents to an appeal before the Lands Tribunal under Part IV of the Landlord and Tenant (Consolidation) Ordinance;
- ii) Lands Tribunal advises parties soon after they file an application for hearing (Form 13) that rental evidence can be requested from Rating and Valuation Department at a fee;
- iii) Parties request information specifying which buildings they require comparables from; and
- iv) Rating and Valuation Department will supply up to 6 rentals from their records. The rents supplied will be those which commence within a period of 6 months either side of the relevant date. The information provided will probably include the address, saleable area, rent, commencement date and any ancillary information available e.g. length of lease, whether carpark included, whether rates are included in the rent, etc.

Subject to the approvals being obtained the Committee will discuss the mechanism of implementing the scheme with the Commissioner. Feedback from members on the proposals are welcome and please feel free to phone David Forshaw on 522 2088 or fax 810 6549. The Committee would also be pleased to hear from members on any other issues concerning the profession.

## NEWS FROM THE BUILDING SURVEYORS

## ANNUAL GENERAL MEETING, BUILDING SURVEYING DIVISION BY OLIVER CHAN

The 9th AGM of the HKIS (BSD) and the 11th AGM of the RICS (HKB) were held concurrently on 15 September 1993 at the Metropal Restaurant, Queensway. The turnout was excellent, particularly in view of the short notice given to members. The following members were elected to serve on the joint council for 1993/94.

Chairman	: RAYMOND CHENG
Vice Chairman	: DAVID CHAN
	: LEWIS K K HO
Hon Secretary	: S K KWAN
Hon Treasurer	: EDWIN TANG

Members	: ALBERT CHAN
	: OLIVER CHAN
	: BARNABAS CHUNG
	: K K CHUNG
	: SEAN J DILLON
	: CHARLES HUNG
	: KENNY KONG
	: PATRICK LAU
	: DENNIS LAW
	: PHILIP WONG
	: KENNETH YUN

Immediate past Chairman	: SAMSON WONG
Hon Auditor	: ALEX CHOW

The newly elected council has a very good representation, comprising members from various government departments and private practises. All Building Surveying members are welcome to raise any subject with the council directly or through the council members.

## NEWS FROM THE JUNIOR ORGANISATION BY ROBIN LEUNG

### APC/TPC WORKSHOP

The first APC/TPC Workshop organised by the JO was held in the Hong Kong Polytechnic on Sunday, 22 August 1993, attended by 180 probationer members.

Miss Virginia Ng of Hill and Knowlton opened the Workshop, delivering her talk on the topic "Communication and Presentation Skills". Her talk was well received and a copy of the presentation is available from Robin Leung who can be contacted at 881 7023.

Mr Daniel Lam, past president of HKIS, shared his view on Professional Ethics and their importance to the professional surveyor.

For the afternoon session, participants were divided into smaller groups according to Division, for the 'Workshop' Sessions.

Special thanks should be given to assessors from all Division for their valuable advice. They are Samson Wong, Eddie Lee, Peter Wong and Dennis Law from BS Division, Stephen Yip, M Y Wan, S L Wong, Louie Chan, Augustine Wong, Marie-Anne Bird, Nancy Hung and Keith Healy from GP Division, and Simon Hung, H F So, Michael Yu, Alex Ho and Micky Wong from QS Division.

## SURVEYORS SERVICES LTD

### CLERK

The administration office of the RICS (HKB) and the HKIS is looking for a clerk to assist in the administration of membership and education. A competitive salary is offered, together with other benefits. Please reply, in confidence to :

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SURVEYORS SERVICES LTD  
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**ROYAL INSTITUTION OF CHARTERED**

**SURVEYORS,**

**(HONG KONG BRANCH)**

**AND**

**THE HONG KONG INSTITUTE OF SURVEYORS**

**SURVEYORS ANNUAL DINNER 1993**

**GUEST OF HONOUR**

**H.E. THE GOVERNOR, RIGHT HON. CHRISTOPHER PATTEN**

**THURSDAY 25TH NOVEMBER 1993**

**THE REGENT HOTEL**

Reservations are now being accepted for the Surveyors Annual Dinner 1993.  
Please complete and return the reservation form enclosed with this newsletter.

**SURVEYORS LUNCH**

**THURSDAY 28TH OCTOBER 1993**

**GUEST SPEAKER**

**DAVID FAULKNER, ARICS, AHKIS**

**PARTNER, BROOKE HILLIER PARKER**

**“NEW STOCK EXCHANGE GUIDELINES**

**FOR VALUATIONS IN CHINA”**

The General Practice Committee of RICS/HKIS was asked to comment on Hong Kong Stock Exchange's proposed guidelines for the valuation of PRC property assets in which Hong Kong listed companies have or may acquire an interest. Whilst supporting the spirit of the guidelines, the RICS/HKIS Working Party have been concerned that any guidelines should be capable of practical application, and with the imminent introduction of the new guidelines it is important that members are aware of the new requirements, which will determine who can value PRC property for Stock Exchange purposes, as well as the methods to be used and the information to be provided. This also raises the questions as to whether the RICS/HKIS should take the initiative to introduce its own guidelines for valuations in China, to consider setting up a Chinese interest group for members, and publicise the role of members in China related work.

**THE INDIA ROOM  
HONGKONG HILTON HOTEL  
QUEENS ROAD CENTRAL  
HONG KONG**

**COCKTAILS : 12.30PM  
LUNCH : 1.00PM**

# SURVEYING

## HONG KONG INSTITUTE OF SURVEYORS

### ANNUAL GENERAL MEETING THURSDAY 21ST SEPTEMBER 1993

The following is an extract from the President's Report, 1992/93, delivered by Mr Albert Cheung.

#### HONG KONG INSTITUTE OF SURVEYORS PRESIDENT'S REPORT FOR 1992/1993

With our AGM shifted from May to September, I must now hold the record of being the President with the longest tenure of office for a single term.

The Institute had a very busy year. I would like to report on the following items.

#### JOINT COUNCIL

Most of you must already know that the change of the AGM date is to synchronize the AGM dates of HKIS and RICS (HK branch) to suit the operation of a joint council with common council members representing both HKIS and the Branch. For the past year, most of the divisions of the Institute and the Branch have been operating under joint divisional councils and chairmanship and the General Council was made up of common members except for the President and Chairman. It is anticipated that after the Branch's AGM next month, the President and Chairman would also be the same person. By and large, the concept of a common council has worked in practice. My feeling is that the benefit of a more efficient operation far out weighs the small inconveniences which may arise in the few areas where the Institute and Branch may have different objectives.

#### MEMBERSHIP

The overall membership of the Institute has increased by about 12% since May 1992, and the current membership now stands at 1730, including students.

#### OFFICE PREMISES

With the increased workload in administration from the expanded membership and the running of the Surveyors Registration Board, the Joint Office has taken on additional staff and extended the office by taking over an additional 400 square feet of office space.

#### VALUATION OF PROPERTY IN CHINA

The Securities and Futures Commission (SFC) approached the Institute earlier this year and raised the question of the standard of valuations of real estate property in China and subsequently issued

their guidelines in the preparation of such valuations for the purposes of asset evaluation of companies. The Institute is working with SFC on this matter through an ad-hoc committee chaired by Mr. David Faulkner. The GP Division is examining the Institute's current standard guidelines for preparing valuations and compiling guideline for valuations in China.

#### ASD'S PROPOSED PROCEDURES FOR SELECTION OF ARCHITECTURAL AND ENGINEERING CONSULTANTS

The Architectural Services Department (ASD) of the Hong Kong Government has issued a set of proposed Procedures for the Selection of Architectural and Engineering Consultants including Quantity Surveyors.

The joint Fees Committee of the QS Division chaired by Mr. Denis Levett is liaising with ASD on the subject.

The selection procedures proposed included fee tendering. The Fees Committee firmly believes that unrestricted fee competition would lead to serious deterioration of professional standards and would be detrimental to the development and construction industry. This view is shared by HKIA and HKIE. The three professional bodies are jointly discussing the matter with ASD trying to reach a workable solution.

#### GRADUATE TRAINING SCHEMES

The Government has suggested to the Institute that it is the right time to explore the possibility of a territory wide training scheme for surveying graduates with participation by the private sector and possibly support from the Vocational Training Council to improve the post graduate training of surveyors.

The Engineers has already enjoyed for a number of years an Engineering Graduate Scheme for which private firms receive subsidy from Government.

This is an opportunity for the Institute to take up the matter with Government and it may be possible that a similar scheme can be set up for surveying graduates.

#### RECIPROCITY AGREEMENTS

The Institute has been invited by The Australian Institute of Quantity Surveyors, The Australian Institute of Valuers and Land Economics and the New Zealand Institute of Valuers to consider possible reciprocity agreements.

It is very likely that the question of reciprocity will also be raised by the Chinese counterparts before long.

#### CONSTRUCTION ADVISORY COMMITTEE

The Construction Advisory Committee was set up by Government in April 1993 as a body parallel to the Land and Building Advisory Committee.

The Institute was allocated only one representative on the Committee, although we have since made a representation to Government proposing that in order to give the Committee the advantage of the full spectrum of expertise from our members, at least two representatives should be selected from the Institute, one from the Building Surveying Division and one from the Quantity Surveying Division.

#### CONTACTS WITH MAINLAND CHINA ORGANISATIONS

Authorities and organisations in Mainland China connected with the land and building industry have shown a keen interest in the Hong Kong systems and methods, and we have received a number of delegations from relevant authorities throughout the year.

In addition a group of our Land Surveying Members attended the Conference of Exchange of Academic and Technological Advancement in Surveying in Cheng Du, Szechun in July 1992 participated by PRC and Taiwan, and a nine member delegation from our Land Surveying GP and BS divisions visited the Guang Dong Society of Surveying and Mapping in December 1992.

#### CPD

Under the able chairmanship of Mr. Roger Nissim and with the support of the Junior Organisation, the Institute organised a full calendar of CPD events. all of which have been well attended by members.

#### ACKNOWLEDGEMENT

I would like to take this opportunity to thank everyone on our Councils and Committees, our representatives on various Government Committees and all volunteers who have helped on various Institute matters for their contribution of time and effort over the past year without which we would not have been able to achieve anything.



# INTRODUCING

## THE ADMINISTRATION OFFICE

The faces behind the scenes - who's who in the administration office, and who to contact with enquiries.



### MORNA HUMPHREY - MANAGER

Morna has been with the administration office since 1989 and has seen many changes in that time. She has been heard to describe her job of administering the two institutions and their 4000 members as a "challenge"!



### CONNIE CHIU - ASSISTANT MANAGER, MEMBERSHIP

Connie looks after all aspects of membership for both institutions and the Surveyors Registration Board. So, if you change your address, have any enquiry on your membership or subscription payment, lost your diploma - Connie is the person to contact.



### IRENE MAN - ASSISTANT MANAGER, EDUCATION

Education and APC are Irene's domain. She looks after almost 2,000 students and probationers, some 900 of whom are at some stage of their APC. This is her busiest time of year, administering final assessments for some 500 candidates, requiring more than 250 assessors. Fortunately, Irene has a lot of patience and a good memory for names and faces!



### MARGARET YUNG - ASSISTANT MANAGER, ADMINISTRATION

Margaret has a wide range of responsibilities, including administration of the expanded publications centre, production of in-house publications, requests for arbitrators or valuers, organisation of our social functions, the monthly



Surveyors Lunch meetings and the Annual Surveyors Dinner, public relations and liaison with the public and the media and generally - anything else we can think of!

### JOLENE TAN - SECRETARY

Jolene's daily workload is far from limited to her secretarial duties - she also organises and administers our CPD events. She is always pleased when events prove popular although has been heard to groan when the monthly total number of CPD reservations topped the 900 mark - that's a lot of reservation forms and cheques to wade through!



# SURVEYING

## RICS - A GUIDE TO THE CHARTERED DESIGNATION

There still seems to be some confusion amongst members as to the rules laid down by the Institution on the use of the Chartered Designation. The following guidelines have been prepared by the Institution.

### WHEN DO THE RULES TAKE EFFECT?

The rules took effect on 25 March 1993.

### WHICH INDIVIDUALS MAY USE THE DESIGNATION "CHARTERED SURVEYOR"?

All Fellows may use the initials "FRICS" and/or the words "Chartered Surveyor".

All Professional Associates may use the words "Chartered Surveyor" provided that the initials "ARICS" are also used.

In addition, Honorary Members and Associates may use the designations, "HonMemBRICS" and "HonAssocRICS", respectively but may not describe themselves as "Chartered Surveyor".

### WHICH PARTNERSHIPS MAY USE THE DESIGNATION "CHARTERED SURVEYOR"?

A partnership of three may use the designation if two of the partners are Chartered Surveyors (i.e Fellows or Professional Associates). In all other cases, a partnership may use the designation if at least 75% of the partners are Chartered Surveyors.

In both cases, each partner who is a Professional Associate must insert the initials "ARICS" after his or her name on the partnership notepaper, if the designation "Chartered Surveyor" is to be used.

### WHAT DOES THE TERM "PARTNER" MEAN IN THIS CONTEXT?

It means any salaried or equity partner but NOT "Associates".

### WHICH COMPANIES MAY USE THE DESIGNATION "CHARTERED SURVEYOR"?

If there are only three directors, the company may use the designation if two of them are Chartered Surveyors.

In all other cases, a company may use the designation if at least 75% of the directors are Chartered Surveyors.

In both cases, each director who is a Professional Associate must insert the initials ARICS after his or her name on the company's notepaper if the designation "Chartered Surveyors" is to be used.

### WHAT DOES THE TERM "DIRECTOR" MEAN IN THIS CONTEXT?

It means an individual on the Board of Directors of the company. It does not include Members held out as directors in any way.

### MAY THE CHARTERED DESIGNATION BE USED IN CONJUNCTION WITH THE TRADING NAME OF THE COMPANY?

No, not unless the trading name is the same as the "corporate name" (i.e the registered company, including "Ltd" where relevant). It is not permissible simply to drop "Ltd" so that the trading name and the corporate name are the same.

### IS THE OWNERSHIP OF THE COMPANY RELEVANT TO THIS RULE?

No, the ownership of shares has no bearing on the use of the Chartered designation.

### DOES A CONSULTANT COUNT AS A PARTNER OR DIRECTOR?

No.

### WHAT ABOUT ASSOCIATED FIRMS?

If there are two or more associated firms but only one is entitled to use the Chartered designation, the impression must not be given that they are also offices of the chartered firm. For example, the words "X, Y, Chartered Surveyors. Offices also at..." may not be used unless all the other offices listed are those of the chartered firm. Instead, a firm could use the words "X, Y Chartered Surveyors in association with P & Q..." If several distinct firms all share the same name, it would also be permissible to say "X and Y Chartered Surveyors, offices at ... in association with X and Y, offices at...".

### DOES IT MATTER WHO THE NON-CHARTERED SURVEYOR PARTNERS OR DIRECTORS ARE?

Generally speaking no. The only restriction is that a firm cannot rely upon the 75% (or 2/3) rule if one of the partners or directors has been expelled from membership and has not been subsequently reinstated.

### WHAT ARE THE ALTERNATIVE DESIGNATION?

The alternative designations are listed in the accompanying chart.

Any member of the General Practice or Rural Practice Division who is entitled to use the alternative designation "Chartered Valuation Surveyor" is also entitled to add to that designation the words "and Estate Agent". The same rule applies to firms.

The designation "Chartered Valuation Surveyor and Land Agent" is no longer permitted.

### WHO MAY USE THE ALTERNATIVE DESIGNATIONS?

An individual Chartered Surveyor may use an alternative designation if he or she is a member of the relevant Division.

A firm entitled to use the designation "Chartered Surveyors" may use an alternative designation if at least one of the partners or directors is entitled to use it. In the case of a company, the alternative designation may be used only with its corporate name and not with its trading name (unless the two are identical).

### MAY ALTERNATIVE DESIGNATIONS BE USED TOGETHER?

No "Chartered Surveyors, Chartered Quantity Surveyors" or "Chartered Surveyors, Chartered Valuation Surveyors", for example, may not be used.

ALTERNATIVE DESIGNATION		
DIVISION	INDIVIDUAL	FIRM
Quantity Surveyors	Chartered Quantity Surveyor	Chartered Quantity Surveyors
Land Surveyor	Chartered Land Surveyor	Chartered Land Surveyors
Building Surveyors	Chartered Building Surveyor	Chartered Building Surveyors
Minerals	Chartered Minerals Surveyor	Chartered Minerals Surveyors
General Practice	Chartered Valuation Surveyor	Chartered Valuation Surveyors
Planning and Development		
Rural Practice		

# SURVEYING

## WHICH FIRMS CAN USE THE LION LOGO?

Any firm which is entitled to use the designation "Chartered Surveyors".

## ARE THERE ANY CONDITIONS ATTACHED TO THE NEW RULES AS FAR AS PARTNERSHIPS ARE CONCERNED?

Yes. If a partnership wishes to use the Chartered designation under the new rule (i.e not all partners are Chartered Surveyors) there must be a special written agreement should be enforced between all the partners, including salaried partners. This must state that any business of surveying carried on by the firm must be undertaken in accordance with the RICS Rules of Conduct. A draft form of words is available from the Institution's Monitoring Section at the Coventry Office. A copy of the agreement must be supplied to the Institution.

Under RICS Regulations partnerships must also indicate publicly that not all partners are Chartered Surveyors. This may be done in either of two ways, depending on whether all partners are listed on the firm's notepaper.

If all partners are listed on all business letters, the designatory letters (i.e FRICS or ARICS) of the Chartered Surveyor partners must be listed alongside.

## ARE THERE ANY CONDITIONS ATTACHED TO THE NEW RULES AS FAR AS COMPANIES ARE CONCERNED?

Any Member who is practising through the medium of a company is already required under Conduct Regulation 10 to include a provision similar to that described in paragraph 16 above, in the Memorandum and Articles of the company. There are no additional requirements of this nature as result of the Chartered designation rule changes. A copy of the company's Articles and Memorandum of Association must be sent to the Institution under the new Rules.

Under the new RICS Rules, companies must display the names of their directors and the designatory letters of their Chartered Surveyor directors, either on their notepaper or on a list displayed in all their offices.

## WILL I TAKE ON ANY NEW RESPONSIBILITIES IF I MAKE USE OF THE NEW RULE?

Yes. Under new Bye-Law 24(5)(c), any Member who is, or is held out as, a partner or director in a firm which makes use of the new rule, will be held responsible for any contravention of the Bye-Law or Regulations committed by any non-Member partner

or director. It will not be possible to reply on the clause in Bye-Law 24(5)(b) that gives comfort to a Member who did not know of the contravention and could not have been expected to have known.

## DO I NEED TO NOTIFY THE INSTITUTION IF I INTEND TO MAKE USE OF THE NEW RULE?

Yes. Please write to the Institution's Monitoring Section, Surveyor Court, Westwood Way, Coventry CV4 8JE.

A partnership must send with its application the following documents:

- (a) a copy of the partnership agreement, including the special agreement described above; and

- (b) if available: a copy of the firm's (proposed) new notepaper or the list of partners as described above.

A company must send with its application the following documents:

- (a) a copy of the Memorandum & Articles of Association; and
- (b) if available, a copy of the company's (proposed) new notepaper or the list of directors described above.

## WHO CAN I CONTACT FOR FURTHER ADVICE?

Angela Backwith (071 334 3826), Emma Johnston (071 334 3827), Margaret Batts (071 334 3770) or Pamela Hirst (071 334 3771).

## DEGREE COURSES AT NAPIER IN EDINBURGH

- ▲ Building Surveying
- ▲ Estate Management
- ▲ Building Engineering and Management
- ▲ Quantity Surveying
- ▲ Building Control

Napier University's existing Honours Degree courses are being developed into an integrated range offering great career flexibility. A common first year lays the basis of a suite of five courses. Students will be given maximum opportunities through the new modular structure to switch from one named Degree route to another. There are also "step-off" University certificates and Diplomas for students who need to change course or University. Direct entry at second or third year level is also available.

Professor S. J. Allwinkle will be in Hong Kong, 25-29 October 1993 staying at the Park Hotel, Kowloon: Telephone: 366 1371 or Fax 739 7259 to arrange an interview. Before these dates please contact Professor Allwinkle on Fax 002 44 31 447 8046.

Alternatively contact Susan Thow, Overseas Students Officer, Napier University, 219 Colinton Road, Edinburgh EH14 1DJ, Scotland. Tel: 001 44 31 455 4682 (Fax: 002 44 31 455 7209).

**NAPIER UNIVERSITY**  
EDINBURGH

## CALL FOR LICENSING OF REAL ESTATE AGENTS

BY PETER C K LI, AHKIS, ARICS

The people of Hong Kong spend most of their savings to make the dream of home ownership come true. In the absence of statutory control, consumers are virtually unprotected and avenues of redress are limited. This is especially true at times of property boom where property prices soar and speculation is rampant. Consumers suffer great pecuniary loss as a result of unscrupulous acts and fraudulent means by some estate/property agents. The following statistics on complaints made to the Consumer Council and the ICAC tell part of the story:

### I. CONSUMER COUNCIL BREAKDOWN OF COMPLAINTS AGAINST PROPERTY AGENTS

	1991	1992	1993 (Jan-Jun)
Sales Tactics	200	85	44
Non-delivery/Loss	4	1	1
Overcharging	4	11	2
Quality of Services	16	8	2
Others	24	13	8
Total	248	118	57

### II. COMPLAINTS MADE TO THE ICAC AGAINST PROPERTY AGENTS

	1991	1992	1993 (Jan-Jun)
No. of cases	80	56	73

Case summaries of two recent complaints to the Consumer Council shed light on the situation:

#### CASE (1)

A tries to buy a flat in Kowloon Tong through an estate agency B. B's property agent persuaded A to sign a provisional sale & purchase agreement claiming that mortgage facilities are available so that A signed it and issued a post-dated cheque as deposit to B. Unfortunately, A had trouble mortgaging the property and then cancelled the cheque to B. B issued a letter through their solicitors to claim damages. A lodged a complaint to the Consumer Council in March 1993.

#### CASE (2)

Early in March 1993, C was looking for a flat through an estate agency D. C inspected a flat through D and another estate agency E. Subsequently C bought the flat but the owner suggested signing the sale & purchase agreement at E's firm. As such the commission went to E. Knowing that C had bought the flat, D has been claiming commission from C by calling ruthlessly at C's office. C made it clear that the commission had been paid to E. C wanted the Consumer Council to warn D if they receive further complaints against D.

Unlike the situation in the UK, USA, Australia and Europe, there is at present no licensing system

governing the conduct and practice of estate/property agents in Hong Kong. This is highly undesirable as home hunters run the risk of losing their savings if they are left in the hands of dishonest estate/property agents.

Back in May 1992, the question of control over estate/property agents was the subject of debate at the Legislative Council. In consultation with the Society of Hong Kong Real Estate Agencies Association (HKREAA), it was felt that estate/property agents should be regulated by means of licensing. However, there was another school of thought which held that self-regulation on the part of the real estate agents would be adequate.

On 30th June 1993, Legislative Councillor Mr Albert Chan put forward a motion debate on putting in place a licensing system for real estate agents. The motion that real estate agents should be regulated by a licensing system through legislation by the Government was passed unanimously at the Legco sitting on 30th June.

Here are some of the arguments for and against licensing of real estate agents.

#### ARGUMENTS FOR

1. As property prices rise, so are the commissions to estate/property agents. Licences for real estate agents are like water to fish and those who defraud consumers are likely to have their licences suspended. Therefore, this deterrent effect cannot be underestimated.

2. Since members of both SHKREA and HKREAA account for about 30% only of all the property agents, self-regulation without statutory control is not adequate. Those who are in breach of the regulations of either of these associations can still operate their "business", albeit under the guise of other companies. Licensing as required by legislation seems inevitable.

3. Licensing not only enhances the quality and status of real estate agents, but also ensures consumers are protected legally and financially. Only then will the image of real estate agents improve and public confidence resume.

4. Real estate agents must be licensed in order to build up their professional image. To protect home buyers, property agents must have the basic qualifications, training or experience before licences are granted. In this regard, recent real estate courses on the theory and practice of estate agency and fundamentals of property valuation run by SHKREA at the City Polytechnic are a good starting point. The Hong Kong Management Association also run property-related courses which can be adapted to meet the training needs of practising estate/property agents.

5. Licensing of real estate agents will improve the quality of services to the public at large. Surveyors firms are also engaged in property agencies; so let consumers choose.

#### ARGUMENTS AGAINST:

1. Licensing of estate agents is not so pressing, as the number of property-related complaints to the Consumer Council has been on the decline.

2. Self-regulation on the part of the estate/property agents is sufficient. Any proposed changes amount to intervention of the existing practice and put the rice bowl of certain estate agents at risk.

3. Regulatory systems on estate agents that work in other developed countries may not work in Hong Kong. A case in point is the one in use in Australia where an agent acts for one party only, either the property owner or the buyer. At the moment, property agents here act for two parties, i.e. the vendor and the purchaser, somewhat like a "match-maker". As they know what is going on in the minds of the two parties, it will be easier to come to a transaction of the property.

4. If a licensing system is required for property agents, Government may consider granting licences to estate agencies. Certain small-scale estate agencies may be forced to close down. Fewer agencies means fewer choices to consumer.

5. As far as commissions are concerned, if the Australian system is adopted in Hong Kong, i.e. the property agent acts for one party only, property owners may have to pay commissions to their estate agents as well.

6. It may take a longer time from offer for sale or leasing to completion of the transactions if single agency is adopted. In Hong Kong, the property market is extremely volatile and time is of course of the essence.

In the interest of the general public, I am in favour of a statutory licensing system for real estate agencies in general and property agents in particular. At the same time, standard sale and purchase agreements should be drawn up so that details of the building are clearly spelt out to avoid misrepresentation.

The proposed legislation should stipulate that property agents should not instruct specified legal firms or banking institutions for their clients. Otherwise, they are liable to fines laid down by the relevant legislation.

I think it is a good idea to set up an Emergency Fund so that consumers can claim damages in case certain property agencies wind up for one reason or another.

Like the practice in Australia and Canada, the proposed legislation should require property agents to set up trust accounts for home buyers to ensure their deposits are securely held.

Finally, I hope that the authorities concerned will seriously consider licensing property agents and real estate agencies through legislation without delay.

I would like to thank Legco Member the Honorable Mr Albert Chan for giving me insight into this subject. I am also grateful to the spokesman of the Consumer Council who provided me with the valuable statistics on the subject of my research.



## LIQUIDATED DAMAGES PROVISION

In July 1990 a single judge of the Hong Kong High Court handed down a decision in a case which held that the liquidated damages provision in a Hong Kong Government contract was invalid. This caused considerable concern and speculation regarding the validity of other liquidated damages clauses in private and public contracts alike.

The Government contested the case to the Privy Council who delivered their judgment earlier this year. In this Article, C.J. Wilson, a partner with the Construction Practice Group of Baker & McKenzie, examines the implications of the Privy Council's decision.

### THE FACTS

The case concerned a contract for the provision of a tunnel supervisory system. Instead of a conventional main contract arrangement, the Government had entered into a series of parallel "designated" contracts designed to enable them to exercise greater control over the project. The Philips contract contained a number of different liquidated damages figures set against the achievement of Key Dates as well as the whole of the Works. The Key Dates represented dates when Philips' work was to interface with the work of other designated contractors and the amounts specified as liquidated damages were to compensate the Government for potential liability to the interfacing contractors.

The form of contract was not a standard Government form (although the liquidated damages clause closely resembled those currently in use). Nevertheless, the Privy Council's decision contains some very useful comments on liquidated damages provisions which are of general application.

### DECISION AT FIRST INSTANCE

At first instance, Mr. Justice Mayo had held the clause invalid as a penalty and also that it was unenforceable for uncertainty. The finding of a penalty was based, in part, on the provision of a minimum figure for liquidated damages (following the previous decision of Sears J. in *Arnhold*) beyond which liquidated damages would not reduce despite partial completion of the Works. The Judge also relied on hypothetical calculations, put forward by Philips, which demonstrated that situations could occur where the liquidated damages increased with the quantity of work done.

The Hong Kong Court of Appeal overturned this decision on the basis that the provisions found invalid

by Mr. Justice Mayo did not apply. The Court of Appeal therefore avoided dealing with the issues of most interest to the construction industry.

The decision of the Privy Council was therefore keenly awaited to see if it would offer any general guidance on the law governing such clauses.

The following are the most important points arising from the decision:

- Except possibly in situations where one of the parties is able to dominate the other as to choice of the terms of a contract, it will normally be insufficient to establish that a provision is a penalty simply by identifying situations where the application of a provision could lead to a larger sum being recovered than the injured party's actual loss.
- As long as the sum payable in the event of non-compliance with the contract is not "extravagant" having regard to the likely range of losses (as reasonably anticipated at the date of the contract) it will still be treated as a genuine pre-estimate. The use of unlikely illustrations should not assist a party to defeat a provision as to liquidated damages.
- Where the range of possible loss is broad, so that, in relation to part of that range, the liquidated damages are totally out of proportion, the failure to make special provision for these may result in the liquidated damages being a penalty. However the Court must not set too high a standard and should normally lean in favour of upholding what the parties have agreed.
- Evidence of what has happened subsequent to the contract being signed is relevant to illustrate what the parties might have reasonably expected at the time the contract was made - but is not conclusive.
- Evidence regarding the commercial stature of the parties and their ability to protect their own interests suggests that the formula agreed on is unlikely to be oppressive. In theory this will be the position in most cases involving substantial contractors, although it is questionable whether this is really the case where there is a competitive tender.
- The specifying of a figure of minimum liquidated damages does not, of itself, lead to invalidity. Whether it is a reasonable pre-estimate depends on the facts.

Here the Government relied on the existence of expenses of a standing nature to justify the imposition of a minimum figure for liquidated damages and the court readily accepted this explanation.

The Privy Council also accepted Government's explanation of the way in which the liquidated damages figure had been calculated for the Key Dates and for the whole of the Works. It accepted that these were to compensate the Government for two different types of loss - liability to interfacing contractors on the one hand and loss of use of the Works on the other. The Government would not be over-compensated if they recovered both in respect of the same delay.

The decision overturns the decisions of Hong Kong judges in *Arnhold* and *Philips* (at first instance) in which minimum liquidated damages provisions were struck down as being inherently unjustifiable. It follows that, where the Employer can show that he will continue to incur some ongoing costs, irrespective of the extent of partial completions, it will be permissible to impose a reasonable sum by way of "minimum" liquidated damages to cover those costs.

The most important general feature of the decision is the Privy Council's refreshing approach to dealing with liquidated damages clauses. These were once looked upon with great suspicion, with the Courts always ready to construe them strictly and to strike them down.

The Privy Council's approach - to uphold agreed damages provisions where possible and to construe them in a practical and "broad-brush" way - marks a change in judicial policy to one more appropriate to the modern business environment. This does not mean that the Courts will uphold all liquidated damages clauses, no matter how badly drafted. However a party attempting to have such a clause struck down will normally have to do more than point to drafting anomalies or hypothetical situations in which the damages may exceed actual loss.

