

Informing and Involving the Total Membership in Professional Excellence!

- The Way Forward for the Surveying Professional in Hong Kong



I have had the opportunity over the last couple of weeks of listening to and discussing with members about the way forward for the profession. They have been very helpful in throwing ideas to me and with these I will attempt to address some of the concerns and make proposals for the task ahead of us.

Celebration Time

The history of surveying in Hong Kong could be traced back 160 years ago with the arrival of the Surveyor-General in 1843. The first land auction was conducted on 22 January 1844. This marked the beginning of the surveying profession in Hong Kong. In 1929, the Hong Kong Branch of the Institution of Surveyors began to operate as an organized society for chartered surveyors in Hong Kong followed by the formation of HKIS in 1984. So, next summer we shall be celebrating the 75th anniversary of the organized presence of surveyors in Hong Kong and 20th anniversary of the formation of the Hong Kong Institute of Surveyors. Let's make it a memorable time in the history of surveying in Hong Kong.

Members Involvement

We must solicit the involvement of senior, mature and junior members in the furtherance of the surveying profession locally and extend our sphere of influence regionally. Members in senior position in business or government services could exert their influence in the course of doing business and acting in

advisory roles for the government. Presenting themselves as examples for other members of the Institute to follow. Mature members could move the Institute forward by being involved more in education, training and professional activities of the Institute and community activities in so far as they are beneficial to the wider community and the Institute. We have every strength and capability to conduct more research for the furtherance of the knowledge of surveying. Junior members should participate in the activities of the Institute and pursue vigorously continuous improvement of their skills and knowledge in surveying.

We acknowledge the contributions of members serving on government advisory boards. They are serving the boards well in their personal capacities. However, many of them are speaking as a lonely voice. We believe they can do more and speak more authoritatively and persuasively if the Institute could provide them with more active support, for example, by sponsoring studies and research in relevant areas and collating data of concern relating to the profession or affecting the well being of the community.

Member's service

The newly designed web site of the Institute is up and running. It consists of many new features that individual members could discover for themselves. Moreover, one of the main features enables members to communicate more freely on the web. Full description of this feature will be made known to members in due course. Hopefully, this would dramatically improve effective communication with members. The conventional way of communicating with members would need to be reviewed in light of progress in the above area and technology advancement.

Membership subscription has not been increased for quite a number of years. However, our predecessors managed to maintain a suitable level of members' services without seeking for any increase in subscription. We heard that some members had asked if the subscription could be lowered. The cost of maintaining membership of the Institute includes membership subscription and fees paid in relation to fulfilling the CPD requirements. I would suggest, subject to General Council's approval and details to be worked out that all members be given CPD/ PQSL Coupons that are worth 5 CPD-Hours. They would be redeemable within 2003 and 2004.

New Disciplines Structure - Professional Development

Surveyors are increasingly put under pressure in the delivery of services. The society has a changing and higher expectation of the knowledge of individual surveyors. To cope with this, members are required to attend continuing professional development events to update themselves. CPD is not compulsory at present and in many occasions it is just not good enough to attend courses and learn from others not in any systematic way. Concerted effort to produce practice directions and guidelines is an institute-wide outcry. Furthermore, traditional skills and division of specialties may not be able to cope with the need of the present day society. Many of the updated skills and knowledge cross our traditional divisional boundaries. A new disciplines structure will allow the profession to respond more promptly to changes in requirements and expectation of services offered by surveyors.

For example, earlier this year the Property Management Committee was reconstituted to be the Property and Facility Management

Committee. They managed to get responses from over one hundred members who are practicing in the field. One of the terms of reference of the new committee is to support members in practice by producing a code of practice and practice guidelines for them.

To do this, the Institute will need to invest extra resources to make the above proposal works. Additional staff with relevant qualification will have to be recruited to pursue the tasks.

Interested Members are invited to participate in the deliberation and give their comments on this important proposal that is going to shape the future of the Institute in light of changes in the market and society and RICS's intention to organize APC in the new faculties setting in Hong Kong.

Promotion of the Institute

As we look back, our engagement in concerted promotional effort for the Institute as a whole was not totally satisfactory. We are now preparing for the publication of a 'Corporate' brochure for the Institute. Other measures may need to be devised and dedicated personnel assigned to conduct promotional activities in achieving wider public acceptance and image enhancement. These activities should be conducted locally and regionally including the Mainland.

Education and Membership

In education and membership, we need to explore all avenues to recruit qualified persons into membership to truly represent the property profession in Hong Kong. When we have a strengthened membership base, we could have a stronger voice and exert more influence in the formulation of relevant government policies. The review of membership entry requirements which has been initiated by the Board of Education and the Board of Membership should be pursued vigorously so that formal recommendations can be presented to General Council at the earliest opportunity.

We also need to critically examine both our APC and CPD format so that we could install some mechanism to progressively increase and maintain our professional competence. This should be introduced at all grades of membership technical, from students to probationers, to members and fellows. This is relevant for our identity and survival, particularly when we need to marry in the global development strategy of the surveying

profession which the RICS has been promoting, whether we like it or not.

These initiatives will necessitate more administrative support. While we appreciate the tremendous contributions by members in committees and working groups, it is unhealthy for an organization of our current size to rely heavily on voluntary service. We may need to review our administrative structure and increase our staff strength to properly run the institute and to provide better service to members.

Life Long Learning

Being one of the pioneering professions in the adoption of continuing professional development programme for members' continuous education and improvement, it is time to review whether the current arrangement could fulfill its objectives. It is not the quantity but monitoring and quality of the programme that are in issue. Should members be required to plan for this continuing learning and report after a certain period of time of their achievements? Should the HKIS dedicate more resources in this area especially for members to move into new areas of services emerged due to the changes in the business and services community?

Professional Ethics

An e-Learning Experience on the Internet produced by ICAC on Professional Ethics will be launched after months of preparation. Members, especially young and student members are urged to utilize this initiative to appraise their understanding of integrity and learn more about the subject of professional ethics.

Environmental Awareness

The Institute is the founding member of the Professional Green Building Council. This signifies not only the coming together of the construction allied professions but also an answer to the call for environmental awareness and demand for greener buildings and sustainable developments in our society. We should be in the forefront of such a movement. Although we are behind most of the developed countries, it is never too late to act. Your President and Senior Vice President have been elected as office bearers of the Council. We look forward to a wider participation by our members in the activities of the Council that will be in full fledge from 2003 onwards. Membership of the various

boards and committees of the Council are open for interested members of the Institute. Furthermore, we will also be organizing a separate standing committee on the Environment and Sustainable Development. Interested members are welcome to contact the Secretary-General for more information on the above.

Networking with other Professional Institutions

Your presidents have been in regular contact with counterparts in the other professional institutions. This has been valuable for joint efforts and getting to know each other more. This will need to be reinforced. Perhaps a networking forum should also be established for our members working in the Mainland with those from other professions. They also have the need to serve their members in the Mainland.

Aspiration of Young Members

Our younger members are coming from a generation that is quite different from the earlier generation. Are we really in grasp of their needs and aspiration? A strong sense of belonging should be cultivated well before the time they join the Institute. Our Junior Organization should be able to do more in addressing their needs and motivate them in work and in service. Our current secretariat is not able to function as a place for members to gather for learning, fellowship and networking. One suggestion is to set up a convenient permanent gathering place - CLUB - for surveyors to come closer together.

With what I have laid out ahead of us, I would propose that the theme for the Institute be as follow:

Informing and Involving the Total Membership in Professional Excellence!

(Presidential Message delivered at the HKIS AGM on 12 December 2002)

NEW PRESIDENT ELECTED AND GENERAL COUNCIL 2002-2003

On 12 December 2002, more than 430 members attended the HKIS Annual General Meeting at the Hong Kong Convention and Exhibition Centre. Mr Kenneth Chan was elected President for the term 2002-2003. Mr Tony Tse as Senior Vice President, Mr T T Cheung as Junior Vice President, Mr Alex Wong as Honorary Secretary and Mr CHENG Wai Pun as Honorary Treasurer. The full list of General Council members for the term 2002-2003 are as follows:-



Office Bearers:

President

Senior Vice-President

Junior Vice-President

Honorary Secretary

Honorary Treasurer

Mr Kenneth CHAN 陳佐堅先生

Mr Tony TSE 謝偉銓先生

Mr T T CHEUNG 張達棠先生

Mr Alex WONG 王來發先生

Mr CHENG Wai Pun 鄭偉斌先生

Ex-Officio Members:

Immediate Past President

Chairman of the Board of Education

Chairman of the Board of Membership

Mr Hak CHAN 陳克先生

Mr Barnabas CHUNG 鍾鴻鈞先生

Mr K K CHIU 趙錦權先生

Members:

Building Surveying Division

Mr Raymond CHAN 陳旭明先生 (Chairman)

Mr Edwin TANG 鄧海坤先生 (Vice-Chairman)

Mr Kenneth YUN 甄英傑先生 (Honorary Secretary)

General Practice Division

Mr Alexander LAM 林增榮先生 (Chairman)

Mr Francis LAM 林家輝先生 (Honorary Treasurer)

Mr Lawrence POON 潘永祥先生 (Council Member)

Land Surveying Division

Mr LAM Li Wah 林利華先生 (Chairman)

Mr Dominic SIU 邵偉青先生 (Vice-Chairman)

Mr Henry CHAN 陳漢鋸先生 (Council Member)

Quantity Surveying Division

Mr Francis LEUNG 梁立基先生 (Chairman)

Mr Gilbert KWOK 郭靖華先生 (Vice-Chairman)

Mr Sam CHENG 鄭森興先生 (Honorary Secretary)

Junior Organisation

Mr Sunny CHAN 陳志豪先生 (Chairman)

Surveyors Times

- Call for Contributions

A NEW TIME HERALDS FOR SURVEYORS

The new look and new name for this HKIS monthly publication signifies our new commitment to promote our surveying profession.

Surveying Times will be an ideal place for surveyors and market practitioners to share and exchange new ideas and reshape our thinking towards traditional market practice and business.

While retaining our regular features in our coming issues, we will pay more efforts to focus on areas that have long been our surveyors' business strongholds and we kindly invite your contributions to share your expertise and inspire others:

APRIL ISSUE - VALUATION CONCERNS

What we look at: Latest changes in accounting and security rules affecting asset valuation; valuation in PRC and new business opportunity; putting value into action - case study on how a valuation affects a corporation decision; how a valuation consultancy firm leverage on its


traditional valuation business model and creates new services; and case law updates on professional ethics.

MAY ISSUE - BUILDING INNOVATION

What we look at: What progress we have made and what are the trends in construction practice; the market and social forces that call for preserving and renovating existing buildings; the building rules that encourages and rewards developers on developing innovative buildings; do green features serve its purpose?


JUNE ISSUE - RETAIL TALES

What we look at: What are the latest market trend in retail center management; how a good center management practice enhance the shopping mall; leasing strategies in meeting tenant demands; why strata-titled retail property is no longer hot property? What to look for in retail investment

For submission enquiries, please send an email to editor@hkis.org.hk 

Professional Services Development Assistance Scheme

The Institute has secured a funding of HK\$422,000 towards the project “Professionalism towards Quality Construction and Property Development” under the Professional Services Development Assistance Scheme (PSDAS) from the Government. The project is expected to last for 12 months and aims to promote professionalism in property and construction development in Hong Kong and to enhance competitiveness of the surveying profession in a regional context. A series of seminars and conferences will be organized in Hong Kong and the Mainland on Quality Construction and Property Development. The first of such seminars will be held in Spring 2003. At the end of the project, a learning package in CD will be produced for dissemination to members and other interested parties.

The Institute is foreseeing that a series of applications under PSDAS will be forthcoming, as the results of this project must be built on through continuous participation of the collaborators and implementing agents. 

23 Young Surveyors Landed inside the LegCo Amidst the Article 23 Debate

A Visit to the Legislative Council Building on 14th December 2002



Stephen WONG
JO Committee Member

Although we had never been inside the Legislative Council (LegCo) Building, it seemed we already knew the place quite well. The narrow corridor there is a place for last minute political lobbying and arm-twisting, a decision is more likely to be made there rather than in the chamber room. And the balcony on the second floor ranks equal with the statue of Goddess on the rooftop in historical significance for the building.

But our recent visit inside of what is the most powerful place in Hong Kong has proved more than a sightseeing experience. Apart from roaming through the building from the ground floor to the top floor, we held a close dialogue with the legislative councillor for our constituency - the Architecture, Surveying and Planning - Hon. P C Lau.

Mr Lau firstly introduced to us the composition, function and power of the Legislative Council, its setup and the operation

of various committees in the Council. He also described the history of this over 100 years old Legislative Council building from its establishment in 1900 to the present. He then explained about the two-tiered voting process for bills proposed or amended by legislative councillors, more complicated than the voting-by-majority method used in government-proposed bills.


For example, under the existing Housing Managers' Ordinance surveyors' interests are largely left out. But a call to amend it almost equals to a zero chance of survival in LegCo because it is unlikely to solicit further interests outside the surveying profession. Despite being a lonely voice, Mr Lau has kept reflecting our concerns to the Government. In last week's HKIS AGM (12 December 2002) we were pleased to hear that Mr Lau has made some headway in getting the Government's nod to review the ordinance.

At the time of our visit, the LegCo was debating on the new security law and we spent half an hour in the public stand listening to some of views expressed by other public bodies. Mr Lau also took the opportunity to share with

us his views on Article 23 and explained in great details of his concerns on the proposed law, which he would bring to the Government's attention.

The visit was meaningful. We not only had a better understanding about Mr Lau's demanding workload in the LegCo, but also the difficulties he faces in his job. He cited the strong support from fellow members in the last two years which have been an important source of energy for him.

Two years ago in the first legislative council election after the establishment of the new SAR government surveyors turned up in droves at the election polls to support the past HKIS President Mr P C Lau. Mr Lau won the seat for the Architectural, Surveying and Planning constituency. Since then, surveyors' opinions on a number of issues such as the long-term housing policy, Tamar site redevelopment and the construction practice have been brought into LegCo.

The event was jointly organized by the JO and QSD. We would like to thank Mr Lau for sparing his precious time in meeting us and showing us around the building. 



Memorandum of Understanding (MoU) between the Shanghai Association of Experts with Outstanding Contributions and the Hong Kong Coalition of Professional Services

A Memorandum of Understanding (MoU) was signed between the Shanghai Association of Experts with Outstanding Contributions (SHAEOC) (上海市突出貢獻專家協會) and the Hong Kong Coalition of Professional Services on 20 December 2002 in Hong Kong. The MoU establishes an outline framework for the exchange and promotion of professional services in the two places and to explore the prospect of reciprocal recognition of professional qualifications.

The MoU covers several types of professionals related to the construction industry including

architects, engineers, landscape architects, planners and surveyors in Hong Kong and the counterparts in Shanghai. The MoU would facilitate the issuance of provisional licence and the compliance of local requirements for professionals to practise in the two places. The actual implementation will be subject to the clarification and determination of the legal and institutional requirements, which are being examined in detail by the representatives of the respective organisations.

The MoU also provides for the local institutes to open their Continuing Professional

Development events to professionals practicing under the MoU for them to satisfy the training requirements of membership renewal.

Notes:-

- 1 The MoU is written in Chinese and the above is a summary for members' information only.
- 2 上海市突出貢獻專家協會會長孫路一先生為上海市人事局局長
Mr Sun Luiyi, Chairman of the SHAEOC is also the Chief of the Shanghai Municipal Bureau of Personnel. [圖](#)

上海市突出貢獻專家協會和香港專業聯盟就部分專業 執業領域開展交流與合作的備忘錄

為促進滬港兩地的共同發展，加強兩地專業執業領域的交流與合作，經上海市突出貢獻專家協會（以下簡稱“協會”）和香港專業聯盟（以下簡稱“聯盟”）協商，簽署本備忘錄。

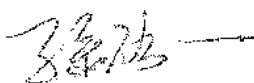
一、合作主體。協會和聯盟將在兩地的相關法律和法規的允許下，在相關職能部門的指導下，組織雙方相關的专业學會和機構，積極推進兩地專業人士間的交流，逐步探索部分專業執業領域中具有執業資格的人在對方地區的執業許可工作。

二、合作領域。目前可在下述專業執業領域中先行進行合作探索，取得經驗後再作進一步推進，即：上海市的註冊建築師、結構工程師、監理工程師、城市規劃師、造價工程師、房地產估價師、資產評估師、工程設備監理工程師，以及香港專業聯盟內具有相應執業資格的建築師學會、工程師學會、園境師學會、規劃師學會和測量師學會各會的會員。

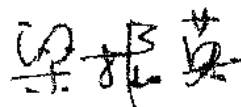
三、合作內容。1、滬港兩地具有相應執業資格的人員，經協會或聯盟的確認，可以辦理臨時執業註冊，時間一般為一年，並可根據需要作適當延長。臨時執業的具體實施辦法由上海市相關行業協會(或專業技術人員執業資格註冊機構)和聯盟下屬的各專業團體依據雙方的相關法律法規制定。

2、雙方可根據各自的需要以及專業發展的要求，由各相關專業部門或機構互相提供繼續教育課程，提供繼續教育基地，提供繼續教育的師資。對參加對方機構舉辦的相關繼續教育課程，可視為已完成本地區規定的繼續教育課程，並作為執業人員再註冊的依據。

3、雙方同意在以下各方面全面地進行交流與合作，即：兩地執業資格的标准與頒授、考試方法、管理制度、執業資格的可比性；最終達到兩地專業領域執業資格的互認。



上海市突出貢獻專家協會
二〇〇二年十二月二十日於香港



香港專業聯盟

External Supervisor Admissible Now! - New Change in APC Guidelines (GP)

Good news for all APC GP candidates! GPD has finally adopted new APC procedures more favourable to our student members. No longer do you need to worry about the disruption to your APC with the departure of your surveyor boss, or you are free to explore new working opportunities with or without surveyors in the new company, are the last things you would be concerned with. We are pleased to see that our members are permeating in every facet of the property universe.


Please note below the amendments copied from the GPD website:

REVISED RULES AND REGULATIONS OF APC


The Council had discussed and endorsed the following recommendations made by the APC, Education and Membership Committee.

(1) External Supervisor / Counsellor

In view of the current economic conditions, students will be accepted to sit for the APC if he or she can find an external supervisor / counsellor practising in a firm other than that of the student.

(2) In the written test, the requirement for all candidates to attempt one compulsory question on valuation has been lifted. Those candidates engaged in agency, property management or other non-valuation practices will have a wider choice of questions. 

HKIS Website - New Look

After many months of preparation, HKIS's website www.hkis.org.hk now has an entirely new look, giving you a brand new editorial content and page layout, and allowing you to surf the Website more conveniently. The functions of the Website have become more comprehensive, being a source of information, a database, a communication centre and more. Besides, it will soon provide members with personal services in the form of Members Corner and Web Mail. Don't miss out, if you have not had the opportunity do please experience the new Website. If you should have any comments please send them to hkisweb@hkis.org.hk 

Extensions *of Time*

- Notifications and Records



Introduction

Most standard forms of contract require the contractor to give notice to the contract administrator (i.e. architect, engineer, etc) when the contractor becomes aware of an event or events, which have caused or are likely to cause delay to completion.

The requirement for a notice may be a condition precedent to the contractor's rights to an extension of time under the contract or it may be no more than a procedural step, which has to be taken in the extension of time process.

Further, most standard forms of contract require the contractor to keep records of the effects of the delaying events, which were the subject of a notice.

Whatever the requirements of the contract, contractors should not forego issuing a notice or keeping adequate records and, for best effect, (for both contractor and employer), notices should be issued as soon as possible. Although this article only reviews notices of delay and records associated with extensions of time, the comments equally apply to notices and records for additional payment.

A Common Misunderstanding

A common misunderstanding in the construction industry is that extensions of time are primarily for the benefit of the contractor, giving him more time to complete the contract works and reducing its exposure to liquidated damages. However, an

appropriately drafted extension of time clause preserves the employer's entitlement to enforce liquidated damages provisions should the contractor cause delay to the contract works even when the completion of such works had earlier been delayed because of the employer.

An appropriately drafted clause includes general provisions for extensions of time for what are often called excusable delays, i.e. delays caused by acts of prevention or breach of contract by the employer or its consultants (architect / engineer), and for delays caused by neutral events for which the employer has agreed to accept the risk in respect of time (such as excessively inclement weather conditions). Hence, one effect of extending the time for completion is that it preserves the contractor's obligations to complete the works within a defined period which, if the contractor fails to do, may cause him to become liable to liquidated damages.

Notices of Delay

The common misunderstanding of extension of time provisions is inevitably prompted by the construction of such clauses, which put the onus on the contractor to "get the ball rolling" by serving a notice, or notices, and the common association of extensions of time with claims for additional payment.

Notification provisions in common standard forms of contract usually deal with contractors' claims for time and money. One of the reasons for requiring the contractor to serve notice is to alert the employer or the contract administrator so that they can consider the consequences of any instruction, variation or other act for which the employer is responsible, in order that the employer or the contract administrator may review such instruction, variation or act and decide either

to withdraw or amend it. Therefore:-

notice = mitigation alert

On the other hand, it could be said that the contract administrator should know whether or not an instruction, variation or act would be likely to cause delay before implementing such measures. However, even the most experienced contract administrators can lack the awareness that the contractor has and the actions which have to be taken once one of these measures are implemented.

Where a contractor does not serve notice then the employer is not alerted to consider mitigation measures. If the contractor breached the contract in failing to serve notice then its claims should be offset by the effects of any mitigation measures which an employer could have taken if the contractor had served notice.

A further common misunderstanding is that a notice served under such provisions represents the contractor's application or claim for an extension of time. This is clearly not the case as, under most forms of contract, the contractor has an obligation (and not an option) to serve written notice. According to the frequently drafted wording:

"the Contractor shall give notice in writing ..."

It is the consequential duty, or obligation, of the employer or his appointed contract administrator to then consider if the contractor is fairly entitled to an extension of time for the completion of the works. However, they can only do this to the extent that either the contractor has provided supportive particulars or the contract administrator has carried out its own investigations.

Hence, under most forms of contract, the contractor has an obligation to serve written

notice(s) of delay and this acts as the starting point for any claim which is to follow.

Standard Wording of Notices

To comply with the notice requirements found in most standard forms of contract, it is recommended that a standard pro-forma delay notice is used either as a company standard pro-forma / letter or, where a company does not have such a standard pro-forma / letter, a bespoke pro-forma / letter drafted at the outset of the contract.

The particulars for any specific delaying event can then be inserted into the standard pro-forma / letter, as necessary, so that each event is identified and the likely effects thereof are stated.

A typical standard pro-forma may be worded as per the example in **Figure 1**.

Timing of a Notice

Most common standard forms of contract require the contractor to serve the written notice in a timely manner or within a prescribed number of days after an event. For example, the time frame stipulated under Clause 23 of the Agreement & Schedule of Conditions of Building Contract, jointly published by the HKIA, HKIS and the Society of Builders (July 1999 Edition) states:

“Upon it becoming reasonably apparent that the progress of the Works is delayed, the Main Contractor shall forthwith give written notice ...”

The requirements of, Clause 50(1)(a) of the HK Government General Conditions of Contract for Civil Engineering Works (1999 Edition) are more elaborate and state:

“As soon as practicable but in any event within 28 days of the cause of any delay to the progress of the Works or any Section thereof becoming apparent, the Contractor shall give notice in writing ...” (Note: the 1993 Edition stipulated 42 days).

Such timing may be amended (usually reduced) by specific clauses included within the Special Conditions that are frequently used to amend standard forms of contract.

As a means of dealing with the time limitations included in such notice provisions, BERA have had experience, on one contract, of the contractor holding regular weekly internal site meetings during which a review was carried out of the instructions, variations, information and any other events which had occurred since the previous meeting and which, delaying events had caused, were continuing to cause, or were likely to cause delay to the progress of the contract works. This assisted the contractor’s staff to identify the delaying events that had occurred and could become the subject of delay notices. The drafter of the notices could, therefore, prepare the same so that notices were served within the contractual time limitations of the notice provisions.

Time at Large

Generally, the contractor has an obligation to complete the contract works by the contract completion date, other than as provided for under the conditions of contract, or is prevented from doing so by acts of prevention by the employer or its consultants.

If the extension of time provisions do not adequately provide for such acts of prevention, and the contract administrator cannot grant an extension of time in respect of such acts, then it is said that time has been put ‘at large’. In these circumstances, the contractor’s obligation is to complete the works within a reasonable time.

Under such circumstances, the employer’s entitlement to deduct liquidated damages would become unenforceable, however, he may be entitled to recover general damages if the contractor failed to complete within a reasonable time. Therefore, even when time is at large, the contractor should continue to issue notices of delaying events and maintain records so that it can substantiate that it completed within a reasonable time.

Condition Precedent

In some contracts, serving written notice of a delaying event is made a condition precedent to the contractor’s rights to an extension of time for that delaying event. The practice of including such provisions has increased in Hong Kong since the introduction of the forms of contract for the airport core projects.

The term ‘condition precedent’ is a legal term and it has been held that if a contractor has not adhered to a condition precedent then he forfeits his entitlements that were the subject of the condition precedent.

On a contract where serving notice of delay by the contractor is made a condition precedent, the employer and/or its consultants must give careful consideration to the events giving rise to delay. If, for instance, the contractor is prevented from completing the contract works on time by an act of the employer, or its consultants (i.e. an act of prevention), and the contractor has not complied with the condition precedent, then the contractor administrator (e.g. architect, engineer) cannot, contractually, grant an extension of time. However, the contractor may have a legal remedy. The legal principle that a party to a contract cannot benefit from its own wrongful acts or breaches may become applicable.

Arguably, in such circumstances, the result is likely to be that the employer’s entitlement to deduct liquidated damages becomes unenforceable, as the employer would otherwise benefit from its own wrongful acts or breaches. However, time would not become at large and the contractor would be obliged to complete the contract works within the time which would have been extended had he complied with the condition precedent. Hence, there would also be no benefit to the contractor as a result of its failure to comply with the condition precedent.

If the Hong Kong courts were to accept similar reasoning this could pave the way for more tolerant provisions which achieve a similar outcome in a less confrontational environment.

However, the case law on this matter is by no means clear - see Mr Molloy’s article in Volume 10, issue 10 November 2001 of the HKIS Newsletter.

Submission of Detailed Particulars

GCC Clause 50(3) of the HK Government standard forms of contract for building and civil engineering works provide that the architect / engineer may require the contractor

to submit full and detailed particulars of the cause and extent of the delay for which the contractor has served notice.

It is in the contractor's interest to submit such particulars in writing as soon as practicable, not least as GCC Clause 50(3) requires such submission, but also as the contract administrator has an obligation only to consider the contractor's entitlement to an extension of time once the information and circumstances are made known to it /them.

Even if not specifically called for in the contract, it is advisable for a contractor to submit interim particulars of the delaying events as soon as reasonably possible, even if the effects of such delaying events continue to be ongoing. Further and better particulars, in the form of further interim, or full and final details may be submitted at a later date.

Record Programme - As Built Programme

The contractor's entitlement to an extension of time is subject to evidence of cause and effect. The burden of proof as to whether there has been critical delay to progress, or completion of the works, rests with the contractor. However, the contractor must, first of all, establish that delay has been caused by an excusable delaying event for which an extension of time should be awarded.

Consequently, it is the contractor's responsibility to keep sufficient records of all delaying events and the cause(s) of those events. The ability of the contractor to demonstrate its case will depend upon the quality and fullness of such records.

It is recommended that a prudent contractor ought to produce, at the start of the project, a comprehensive programme that is regularly marked up indicating actual start dates, durations and end dates of as many activities as possible. The contractor can also add to the same record

programme the dates on which significant instructions, variations and events were ordered or occurred. Further, if extra work was instructed then new items could be added. This would be a first step on the road to establishing cause and effect.

It is likely that such a record of events and activities could be used to indicate, with additional input by the contractor, the nexus between a delaying event and the effects thereof. It will also be useful in the production of a delay demonstration programme as proof of the contractor's entitlement.

Conclusions

There is nothing new or revolutionary in this article yet it never ceases to surprise how many contractors fail to serve notice and fail to keep adequate records. The best advice which can be given to any contractor is to:-

"give notice timeously"

and

"keep adequate records"

For further information contact bera@netvigator.com

Figure 1

ABC CONTRACTORS LIMITED	
To : (Architect/Engineer)	Attn. :
Contract :	
NOTIFICATION OF DELAY	
Date :	Ref No. :
In accordance with Clauseof the General Conditions of Contract, we hereby notify you that it has become apparent that the progress of the works is likely to be delayed by the event(s) described herein, with the effect that completion of the works is likely to be, or has been, delayed beyond the Date for Completion.	
We hereby advise that we consider that we may become entitled to an extension of time for the whole of the works pursuant to sub-clause	
Document Reference :	
Description of Event Causing the Delay :	
Location Affected :	
Likely Extent of the Delay :	
We confirm that we are using and shall continue to use our best endeavours to prevent such delay.	
We shall continue to record and monitor the effects of this event(s) and maintain such records as we consider necessary, however, please do not hesitate to advise us of any particular records you require to be maintained to enable you to determine our entitlements.	
Signed :	Position :
Dated :	Copied to :

Why are yields for prime retail properties *de-coupled* from prime office property yields in *Hong Kong*



will produce similar yields. Otherwise, market force will drive the capital value of under-priced properties up and the over-priced ones down until investments with similar risks and growth prospects produce similar yields.

Recently the authors of this article were asked, “Why are yields for retail properties de-coupled from office property yields in both Hong Kong and major cities in PRC? Why is the relationship between prime office yields and prime retail yields so different than in other leading cities of the world?” Taking London as an example, prime office yield stands at around 6.25%~6.75% and prime retail yield is around 5.85%~6.25% - only a small difference. However, in Hong Kong, we can see that Grade A office yield in Central and Wanchai is around 4~5%, while the prime retail property yield in Causeway Bay and Mongkok is around 7~8% - a difference of 3% between the sectors. In Shanghai, Grade A office gross yield (i.e. before tax yield) is around 8~10% and the prime retail gross yield is around 10~13% - a difference of 2~3%. At present, we do not see that prime offices have better growth prospects than prime retail properties for the foreseeable future. Given the above preface, a higher retail property yield implies that retail risk premium is higher than that of office properties in Hong Kong and PRC. Is retail property investment really more risky than office properties in Hong Kong and PRC?

Yield comprises three basic components: “interest rate”, “risk premium” and “expected growth rate of rental income”. The “interest rate” usually refers to the annual time deposit rate that an investor can earn by depositing money in the bank. In fact, it can be the rate of return on any risk free investments that are readily available in the market, such as government bonds. To a mortgage borrower, mortgage rate is his risk free interest rate because he can save interest expenses without taking risk if his money is used for repayment of debt. “Risk premium” is the required annual rate of return in excess of the risk free interest rate, which an investor demands to compensate for taking the risk of the subject investment. That is, the higher the investment risk, the higher the risk premium demanded. “Expected growth rate of rental income” is the expected average annual long-term growth rate of net rental income from the property investment. The higher the expected growth of the rental income, the more willing people are to invest in the property. The relationship between “interest rate”, “risk premium” and “expected growth rate of rental income” is roughly given by the formula below:

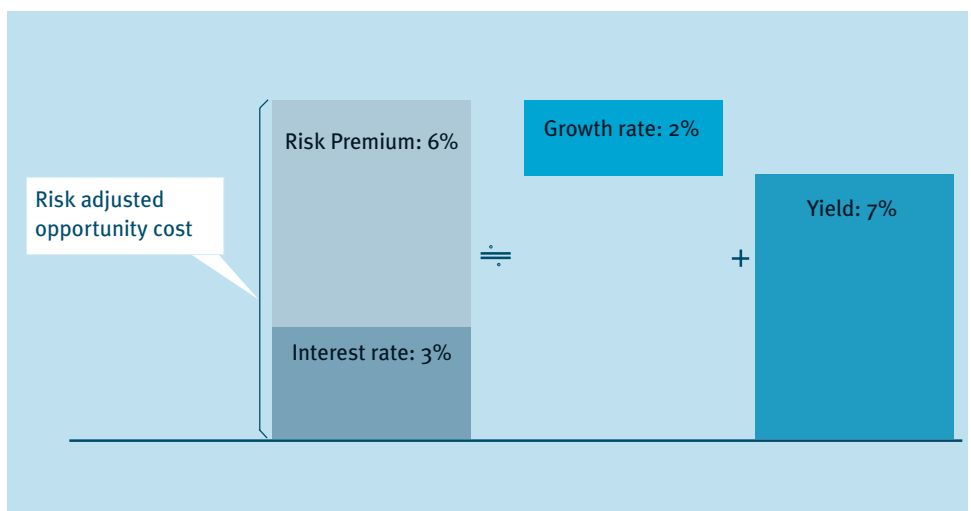
$$\text{Yield} \doteq \text{Interest Rate} + \text{Risk Premium} - \text{Expected Growth Rate of Rental Income}$$

For example, the risk free interest rate is 3% for an investor. He considers that a 6% annual rate of return above the risk free interest rate is required to compensate for the risk taken in a property investment. In addition, it is expected that the net annual rental income of the property will grow at an average rate of 1% per year over a long run. Then, the yield of the subject property for this particular investor would be about 8% (i.e. 3% + 6% - 1%). If the existing owner of this property and other

investors in the market believe that the yield should be more than 8% (i.e. given that the current market rent is fixed; property capital value is worth less), the existing owner will sell the property to the investor. Thus, we can observe from the transaction that the market yield of this property is 8%.

Other aspects being equal, a property with a higher growth opportunity will produce a lower yield. In the above example, if the investor expected that the growth rate of net rental income is 2% instead of 1%, the yield would be about 7%.

No doubt the yield has already taken into account the risk-adjusted opportunity costs of the capital and growth prospects of the property investment. Different types of properties have different ranges of yields, due to the differences in risks and growth prospects for different types of properties. However, in an efficient market, if the risks and growth prospects are similar, property investments



It might be said that the risk for retail property investment is higher than that for office property and that retail rental fluctuation is greater. However, the authors found that Grade A office rents in Hong Kong plummeted by more than 40% during the past 2 years while prime retail property rents only recorded 0~14% drop over the same period which suggests the opposite.

Despite the stability of rental issues, it could be suggested that the liquidity of office properties is higher than that of retail properties. The authors checked the past 2 years transaction records and comparing the number of transactions in both retail and office properties with similar dollar amounts in Hong Kong. The result does not suggest that retail properties have fewer transactions. The authors have discussed the liquidity issues with some frontline investment agents and arrived at no common agreement on which type of property is more liquid.

It may be that management issues for retail properties are more sophisticated than those for office properties. Retail properties require specific expertise, especially for shopping arcades. Good management plays a vital role in the success of a shopping arcade. It is particularly important to retail properties in Hong Kong and major cities in PRC where the lease terms are generally quite short, i.e. 2-4 years are common in Hong Kong as compared with 10~25 years in western countries where retail properties are leased in bulk and the owners only need to sign a long lease with head tenants and pass the management responsibilities to them. This makes retail property investments in western countries more like buying a coupon-paying bond and the owners are free from annoying management issues and rental fluctuations during the long lease terms. In Hong Kong and PRC this is not the case and the owners of retail properties have to take the on-going management challenge. Less successful or obsolescent management strategy will be quickly reflected on a lower rental income. The expertise required to successfully maintain a shopping arcade includes the following:

- (a) Marketing
- (b) Interior design
- (c) Facilities management
- (d) Maintenance
- (e) Lease management

These specialised skills coupled with local knowledge are important. While property management companies in Hong Kong and

PRC can provide the required maintenance expertise, the retail consultancy services that provide other expertise are far from adequate and popular in both Hong Kong and PRC (as compared with western countries). The owners usually have to retain most of the management duties and take on the challenges themselves. International and institutional investors are reluctant to undertake them.

Equally, high street shops require less expertise but have other problems. Many prime shops in Hong Kong and Shanghai are located in old buildings in congested areas. While the property values of retail shops are high, the building quality and common area maintenance are poor. Unlike shopping arcades, the property management for high street shops cannot enjoy the benefits of economies of scale. The fragmented property management imposes substantial costs to a high street portfolio. All these factors make investing in retail properties unattractive to institutional investors and, historically, they have been less involved in investing in retail properties in Hong Kong and PRC. At the same time, local investors and developers do have comparative advantages in owning retail properties in Hong Kong and PRC. They are more familiar with the market and are able to respond to changes quickly, although they cannot enjoy the benefits of diversification of risk across a broad portfolio comprising different countries.

Let us discuss how diversification affects investors in pricing properties. Imagine that an investor has one property investment in his portfolio and all his income comes from this source. If the building where the investor's property locates collapses, the investor will lose all of his income. In order to compensate him for taking the risk, the investor demands a certain percentage of the rate of return as the risk premium. Then, let us consider a second investor, who has two properties in his portfolio with equal weight. Each property is identical to the property of the first investor but the two properties locate in separate buildings in different locations. If any one of these buildings collapses, he will lose only half of his income. He will only lose all his income if both buildings collapse at the same time but this is less likely and thus the risk is reduced. Therefore, the second investor is safer than the first investor and the second investor demands a smaller percentage of the rate of return as risk premium

than the first. We can see that the required risk premium from the investor reduces as the diversification of investment grows. In fact, the risk that the property will collapse is one example of "diversifiable risk". In a well-diversified portfolio this will tend to be zero, i.e. a well-diversified investor will not demand a risk premium for diversifiable risk.

The risks of an investment can be classified into two sections: "systematic risk" and "diversifiable risk". Systematic risk is one that will affect the whole portfolio and cannot be eliminated through diversification. Macro-economic issues, interest rate and legal changes are examples of systematic risk. Diversifiable risk affects individual property but its effect on the entire portfolio is diminished through sufficient diversification. Examples include the rental default of a tenant, fire, water pipe leakage, etc. Since diversification can reduce this, investors should diversify unless the costs are so high as to offset the gain. If the market is efficient and all investors are competitive, only systematic risk is relevant in risk premium consideration for an investment.

However, classification of systematic and diversifiable risk is not the same for all investors. Local investors in Hong Kong and PRC cannot view natural disasters or economic downturn as diversifiable risks and have to include these in their risk premium assessment. However, they are diversifiable for international institutional investors, and thus international investors can require smaller risk premiums.

Perhaps this explains the yield gap between prime office properties and prime retail properties in Hong Kong and cities in PRC. In Hong Kong and cities in PRC, international and institutional investors are active in Grade A office investments. These big investors usually enjoy international diversification and have the advantage of demanding a lower risk premium. Retail property markets in Hong Kong and cities in PRC have not fallen within the regime of international property players until now. When international players are more involved in the retail property sector, we anticipate that the yield gap between prime office and retail properties will gradually converge. 

ASP vs. Enterprise Solution

- to be or not to be?

John CHIANG

FKIS, MRICS
Group Operations Director, Icflox International Limited
(www.icflox.com)

INTRODUCTION

In his last article titled *“Caveat Emptor: Let the Buyer Beware”*, the author shared with his fellow professionals how they should go about selecting bills of quantities production software, as well as e-tendering solutions. Following this line, John Chiang now moves onto recommending the criteria for choosing from the various e-Project Management systems in the market and how to decide upon whether to go for an e-Project Management system provided by an Application Services Provider (ASP) or to have a Client’s server based “Enterprise Solution”.

THE NEED FOR AN e-PROJECT MANAGEMENT SYSTEM

Instead of adopting a “sales brochure” approach to explain the need to adopt an e-Project Management system, or to make a superficial statement like “...in the midst of an ever-increasing competitive Construction Industry, we have to become more efficient in everything we do every day in order to survive in the fierce competition...” I find the following script, based on a true story, to be by far the best answer to any questions relating to the need for an e-Project Management system:

Scene	Office of an Australian Architectural firm with full height external glazing overlooking a man-made pond at the Ecological Square, Shenzhen, Peoples’ Republic of China on a sunny morning
Set	Conference Room with two sides of the glazed wall opened to the same view
Take	First project meeting on the Construction of a Manufacturing Factory in Vietnam

Characters MD of an American Project Development & Management Company usually stationed in the USA. (*The Project Manager*)

Director and Senior Project Manager of a renowned consultancy group usually stationed in Australia. (*The Engineer*)

Project Director & Principal Architect of an Architectural firm stationed in Australia. (*The Architect*)

Senior Architect (A Grade) and Senior Engineer of the Architectural firm stationed in Shenzhen. (Putonghua i.e. Mandarin speaking and opted for a Simplified Chinese language interface)

The Author, acting in his capacity as a director of Icflox International.

Other participants (absent at meeting): The Client (usually stationed in Germany), Building Services Engineer (usually stationed in Australia), Quantity Surveyor (usually stationed in Australia).

It all starts with the Project Manager opening the meeting with: “I need a powerful and efficient e-Project Management system to collaborate with all the members of my project team whom are dispersed in various parts of the world”.

It was obvious that this disparate team needed an application that would keep them in control of their project, wherever the participants were in the world. But you should not get the impression that it is only under these special circumstances that an e-Project Management system is required. If you continue reading, you will be able to judge for yourself whether or not there is a need for such a system on your projects.

WHAT TO LOOK FOR?

Basic functions to be looking for from an e-Project Management system are summarized as follows:

1. Document Management
2. Collaboration / Communication
3. Workflow Management
4. Audit Trails and Reports
5. Security

DOCUMENT MANAGEMENT

The reason that I place Document Management at the top of the list is straight forward: being equipped with a powerful and efficient Document Management system, any project manager is already half way to being successful in managing his or her projects.

When was the last time that unnecessary abortive work led to significant delays to the regular progress of the works on your projects? Was that due to the contractor not building against the latest drawings or was it due to a late instruction from one of your consultants or a miscommunication with a sub-contractor?

To mitigate such risks, requirements for version controls and file history logs are, therefore, a must in the document management. As much as anything, you can regard this as a “risk management tool”.

The functions that you should be looking for are the capabilities to always make the latest version of a drawing or a file available to the users whilst keeping all the older/superseded versions of the same in archive for easy retrieval as and when required.

Needless to say, the following features should also form the basic standard provisions:

1. The ability to customize a folder/sub-folder/sub-sub-folder structure to suit any particular project.
2. The capability of creating security settings to control the access of a registered user to any of the folders and/or sub-folders.

3. The ability to clone a preset folder structure and its strings of sub-folders (including their individual security controls) for use in another project.

As far as storage of documents is concerned, you should go for a system with a centralized repository where all documents are kept in shared folders. The benefits behind this recommendation are as follows:

1. Integrity

Since the drawings and other documents that are being uploaded and issued are the only really “copies” that are kept on the common database, as opposed to every recipients receiving and keeping their own copy, the version control and the integrity of the files can be maintained.

2. Data Storage

As only one copy of the drawings and other documents are being kept, the overall size of the data being stored in the servers will be kept to the minimum.

3. Disaster Recovery

Drawings and other documents uploaded and stored centrally facilitate easy backing up of the data into tapes for keeping off-site and for ease of implementing a disaster recovery plan.

COLLABORATION / COMMUNICATION

Now that I have covered the basic requirements for a document management system, the next question to be asked is how can the e-Project Management system facilitate an efficient collaboration/communication channel between the participants in a project team?

The following check list should be able to assist you in formulating your choice:

1. User-friendliness

What more could you ask for if the “desk top” in an e-Project Management system is providing you with the look and feel of your familiar software, say, Microsoft Outlook, with all the Menu Bar, Tool Bar, etc. neatly placed in a convenient spot on your screen?

Moreover, how convenient would it be to have built-in viewers that can facilitate the sharing and viewing of documents amongst project team members whom may not have the associated software installed?

2. Alerts

A good e-Project Management system should

provide you with the freedom that you do not need to continually log into and out of the system to see if there are matters for your attention.

Upon demand from the sender, an e-mail notification should be capable of being sent to the team member’s preferred mailbox. In the event that such a communication is not really urgent, a daily wrap-up should, in any case, be sent automatically to all team members.

Apart from the various e-mail alerts, it would be an essential feature to show the items awaiting actions on the “desk-top” of the users once he or she has logged into the system.

3. Retrieval of Documents, etc.

Three factors come to mind for enabling the successful retrieval of any document at any time from an e-Project Management system. They are:

- Search Function - The ability to quickly retrieve a file or drawing by keywords, date of upload, etc.
- History Log - The tracking of all access being made to a file or drawing including reports on the name of the person accessing the data, the action taken (i.e. view, download, comment, etc.) and the date and time.
- Revision Log - Apart from always making the latest version available, keeping older versions of drawings and documents is of equal importance. Whilst maintaining a record of the various versions of a drawing or document, an e-Project Management system should be able to refer back to these files, directly and easily, as and when required.

4. Threaded Discussions

It has always been frustrating to locate all the correspondence relating to a particular subject because the respondents’ replies will be returned at different times and, in a conventional hard copy filing system, might well have been filed in chronological order, so making the retrieval of any series of related correspondence difficult.

You might, of course, open a separate folder to store a history of hard copy correspondence for a particular subject. But, how often would correspondence of seemingly minor importance deserve a folder of its own?

For a “threaded” discussion, an e-Project Management system should enable the threading of all correspondence relating to a same issue, so as to allow the parties involved to follow the whole series of comments and replies from all participants from day one.

5. Transmittal and other workflow forms

Standard transmittals and other workflow forms should be made available in an e-Project Management system so as to introduce certain standard and orderly processes for collaboration and communication.

Such standard forms should be designed so that, apart from being user friendly, they should minimize the requirement for having to do a lot of typing or redesigning for every project. Examples would be:


- To select the recipients from a pull down list.
- To indicate an action deadline by clicking onto a selected date on a pop-up calendar.
- To have an attachment function to append files or drawings to the transmittal / form.
- To categorize the communication as a “Private” one so that the contents are only shared amongst the invited participants in the project team.
- To have commonly used forms like “Request for Information (RFI)”, “Submittal”, “Defects List”, etc., to further enhance effective communications and collaboration within the project team.

6. Commenting functions

To accelerate the process of decision making, you should be asking for a commenting function on documents and drawings. Redlining, clouding and inserting text as layers on documents and drawings alike should, therefore, also form the basic provisions of an e-Project Management system.

WORKFLOW MANAGEMENT

One ingredient for successful project management is to establish the correct channel of communication between different tiers of participants within the project. If this is not managed properly it becomes a nightmare for any project manager, especially with today’s use of the Internet.

Standard workflow requirements, such that RFIs from the contractor is, for example, routed only to the architect and the engineer, should be capable of pre-setting. After commenting on the contractor’s RFI, it might be routed to the quantity surveyor for cost estimation and finally to the project manager for comment and approval. Basic set-up of routing and approval process is therefore a must. 

When the Hong Kong Dollar Peg Goes...



Chi LO

President and Chief Strategist, TBO Ltd., Hong Kong

No one doubts about the fundamentals behind the HKD Link, as the local currency peg is officially called, in the short-term. However, there are signs that the government might be mulling to un-peg in the medium-term as an escape route to skirt expected prolonged deflation. The doubt about the viability of the peg is a matter of practicality, but not its suitability for Hong Kong.

Deflation makes the peg a burden

The single most important factor that makes a die-hard supporter of the HKD peg, including myself, rethink its viability is the entrenched threat of global deflation. The reason lies in the worsening fiscal position, which the recent Standard & Poor's downgrade of the HKD outlook serves to highlight. More crucially, the rise in the fiscal deficit also reflects the government's unwillingness to tolerate more economic pains and, hence, support the peg.

The currency peg is worsening Hong Kong's fiscal balance because of its negative impact on local property prices and fiscal revenue intake under a global deflationary backdrop. Without inflation, the days of rampant property price growth will not return. Since the share of land premia and stamp duties

account for a big chunk of total fiscal revenues, the collapse of the property market since the 1997/98 Asian crisis has hurt fiscal revenue intake significantly. The shrinkage in the local property market as a source of fiscal revenues suggests that Hong Kong's budget deficit had become structural under the peg.

Continued rise in the fiscal deficit and erosion of fiscal reserves are undermining the foundation of the HKD peg. This is because the fiscal reserves (HK\$301.7 billion as of October) form a major part (almost 40%) of the Exchange Fund that underpins the peg. If the annual fiscal deficit remains at around HK\$70 billion, as the current trend shows, the fiscal reserves will be depleted in four years. But investor confidence will crumble before the fiscal reserves run out, causing massive capital outflow and putting pressure on the peg.

The view that a complete depletion of the fiscal reserves, which will still leave HK\$570 billion in the Exchange Fund, does not necessarily crush the peg is naive.

When it comes to defending the HKD peg, it is not what the Hong Kong Monetary Authority (HKMA) expects to commit in case of a crisis, but what it eventually would have committed that matters. The latter is defined by the amount that depositors would withdraw from the banking system in case of a confidence loss.

It is true that the Exchange Fund (excluding the fiscal reserves) amounts to 240% of Hong Kong's monetary base, which includes notes and coins in circulation, banks aggregate balance with the HKMA and Exchange Fund

securities. But when it comes to the survival of the peg in a confidence crisis, it involves the whole HKD deposit base. The Exchange Fund covers only 30% of all HKD deposits. Hence, if everyone were to convert HKD deposits into USD or other hard currencies, there would not be enough foreign reserves to meet demand; the HKD peg would crack. Local public confidence is indeed fragile, as the growth of HKD deposits has fallen steadily since the Asian crisis. The point is that falling fiscal reserves will erode the margin of safety provided by the Exchange Fund and impede the authorities' ability to deal with contingencies effectively.

If the government resorts to borrowing, as some are suggesting, to plug the deficit hole on the back of depleting fiscal reserves, it will exert more stress on the Exchange Fund and erode public confidence further. The Fund will either act as a direct lender or a guarantor for the borrowing. Both acts will require it to commit more resources to fund the fiscal deficit, thus reducing its ability to protect the peg.

Forcing a choice

Hong Kong's structural fiscal deficit and deflation are forcing the government to choose a solution between lowering the external price of money (i.e. un-pegging the HKD) and lowering asset prices (i.e. chronic asset price deflation). The political will to tolerate the economic adjustment pains under the currency peg is paramount to the survival of peg. This means no government fiddling with the economy even at times of economic stress. However, the persistent rise in Hong Kong's public spending to boost growth is the most

notable sign of interference. Since 1997, fiscal spending has risen to 24% of GDP from 17%. Indeed, excluding military spending, Hong Kong now has one of the highest public spending-to-GDP and fiscal deficit-to-GDP ratios in Asia.

Large fiscal spending looks likely to stay, as government thinking has shifted from laissez faire to hands-on policy. Chief Executive Tung Chee Wah announced in February 2002 a HK\$600 billion, 15-year infrastructure plan to boost growth all in the name of salvaging the economy (i.e. counteract the negative adjustment effects inflicted by the HKD peg). Meanwhile, the government has also been trying to support the property market with measures to curb land supply and/or suspend public sales since 1998.

However, from the currency peg perspective, these market-supporting measures distort the peg's adjustment mechanism. They also show that the authorities are hitting their tolerance limit and, hence, mulling a policy shift. All this is best summarised by Anthony Leung's anti-peg comments since he took over as Financial Secretary.

No constitutional backing

Indeed, it is easy for Hong Kong to un-peg because the HKD peg does not have a robust constitutional backing. Article 111 of the Basic Law only guarantees the HKD as the legal tender in the territory after its reversion to China in 1997 and ensures the issuance of HKD must be 100% backed by a reserve fund. It does not guarantee the HKD peg and its convertibility rate of HK\$7.8 per USD. On the other hand, the Argentine peso peg was enshrined in the constitution and scrapping it needed approval from both houses of Congress. Yet, the peso peg still unraveled under severe economic stress.

The point is that the fate of a currency regime is more a political decision than economic, and the advent of a new era of prolonged disinflation, with periodic deflation, has cast

doubt on the desirability of the HKD peg. The government is increasingly uncomfortable with the long-term burden the peg brings to the economy under such circumstances. However, it will not un-peg in the short-term because of technical difficulties, such as reforming the HKMA to an independent monetary policy manager.

All this does not deny the merits of the HKD peg for Hong Kong's small open economic system. After all, scrapping the peg will not solve Hong Kong's structural problems, such as skills mismatch, education problems and an outdated economic model based on asset-trading. The alternative currency regimes are not any better. The volatility from a floating exchange rate would hurt the city's competitiveness as a financial centre, while a managed float would risk politicising the exchange rate.

If the peg goes

Given the signs of wariness about the peg, investors should prepare for the outcome of un-pegging the HKD, which would mean a sharp drop in the HKD exchange rate in the first instance. When that happens, how would Hong Kong's assets, in particular property prices behave? As a reference, we can look at the stock market behaviour in Argentina and the UK, both of whom had broken their currency pegs in recent years.

In fact, Hong Kong's property prices could start rising on emerging signs for a government decision to un-peg, as the markets expect to see a major economic relief from the constraint imposed by the peg. Precisely for the same reason, Argentina's stock market surged 100% in the month before the peso was scrapped.

What happens next to asset prices will depend on whether Hong Kong could restructure itself to survive in the new economic era. Argentina's experience also shows that hesitation to purge the structural woes had caused asset prices to fall back after un-pegging the peso. The Argentine government

imposed strict capital and deposit controls and created a dual exchange rate to skirt the full devaluation and restructuring pressures. But all these measures have only postponed thorough adjustments, and thus haunted the markets.

On the other hand, UK stock prices rose steadily after the British pound dropped out of the Exchange Rate Mechanism (ERM) in September 1992. The ascent of UK equity prices lasted until 2000, when the global investment bubble burst. This sustained rise of British asset prices after the break of the sterling peg from the ERM was a result of economic restructuring, notably in the rigid labour market. Britain's productivity and economic growth have consistently outperformed many of her European cousins and thus supported asset price growth.

What all this means is that although un-pegging may give an initial push to Hong Kong's property prices, what happens in the post-peg era will depend on its restructuring effort and the macroeconomic environment. The latter is outside Hong Kong's control, but the ability to reinvent itself will decide if Hong Kong's asset markets could be revived in the post-peg era.

The strategy for Hong Kong's property investment really depends on one's outlook for the territory's ability to reinvent itself in the post-peg era. And opinions are split between bulls and bears. Long-term investors who are optimistic about Hong Kong's restructuring may use the current market weakness to acquire high quality, well-managed properties. On the other hand, skeptical investors may use the expected recovery in property prices in the run up to un-pegging as an opportunity to exit.

Send your comments to the author: nchi_lo@yahoo.com 

Default of Contractors

- The Position at *Common Law*



A number of people have drawn my attention to the fact that I have not written any articles about the important area of termination. It is important because if one party exercises its rights incorrectly and terminates a contract it can lead to far reaching problems. So I thought that I would start this month by describing determination at common law, and conclude next month by looking at the contractual provisions for determination in the local forms of contract.

Where there is no clause in the contract providing for determination, a contract can always be determined at common law.

Determination at common law can only take place where one party commits a breach of contract, and that breach amounts to a repudiatory breach.

A repudiatory breach is basically a breach which goes to the root of the contract. Exactly what goes to the root of the contract in a construction contract is often difficult to identify and prove, which is one of the reasons why almost all forms of contract include their own express determination clauses which set down expressly the grounds upon which a party may determine.

Often these grounds include matters which would not in common law terms amount to a repudiatory breach. Particular examples of this

are failure to get consent to sublet the works - usually a ground for determination in a contract, but not a ground which could be said to go to the root of the contract entitling determination at common law.

At common law repudiatory breaches may include the following conduct:

- **Abandoning the Works.** A fairly straightforward scenario and one which has long been held by the courts to constitute a repudiatory breach. For example in *Marshall v. Mackintosh (1898)* there was a contract for the demolition and rebuilding of a hotel. The contractor abandoned the work before completion and the court held that the contractor's action amounted to a repudiation.
- **Delay in Completion.** In a construction contract where time is not generally of the essence, delays in completion are common and the remedy for late completion is liquidated damages. Therefore delays on the part of the contractor will generally not amount to a repudiatory breach. This point was confirmed in *Chandler Bros Ltd v Boswell (1936)*. Only in cases where the delays are of such nature or duration as to show that the contractor does not intend to be bound by the conditions of the contract will this amount to a repudiatory breach. Clearly proving when a delay goes beyond an ordinary construction contract delay and becomes an intention not to be bound by the conditions of contract is subjective and difficult and therefore extreme care must be adopted by an employer if such a ground is to be relied upon.
- **Defective Works.** Similarly in an ordinary

construction contract defective works or minor omissions do not constitute a repudiatory breach where the work is substantially completed. In *Hoenig v Isaacs (1952)* Lord Denning said:

When a contract provides for a specific sum to be paid on completion of specified work, the courts lean against a construction of the contract which would deprive the contractor of any payment at all simply because there are some defects...It is not every breach... which absolves the employer from his promise to pay...only a breach which goes to the root of the contract..."

However, notwithstanding this point, defective works can amount to a repudiatory breach where the defects are of such magnitude that the contractor has no hope of rectifying them. This was made clear in *Bolton v Mahadeva (1971)* where a central heating system installed in the defendants' house did not work properly or effectively. The system gave off fumes and failed to heat the house adequately. The court held that it was impossible to say that there was a breach that went to the root of the contract.

Interestingly, and distressingly from a contractor's point of view, a failure to make payment under the contract is generally not a sufficient ground to rely upon to determine a contract (*Mersey Steel and Iron Co v Naylor, Benzon & Co (1884)*). Only a persistent and recurring failure to make payment would amount to a repudiatory breach of contract.

It should be noted that the repudiatory breach itself does not determine the contract. The other party or the wronged party has a choice. It can either insist that the other party performs its contractual obligations (by expressly affirming the contract) or it can accept the repudiation, thus bringing the contract to an end. The wronged party can then sue for damages for the breach of contract.

It is established that the express rights to determine a contract set out in the relevant clauses in the conditions of contract are in addition to the common law rights set out above, and are not in substitution of them. This point has in fact been affirmed very recently in the case of *Stocznia Gdanska SA v Latvian Shipping Company and others (No 3)*. So where a contractor is in default and there is a clause in the contract providing for the employer to determine the contract, the employer can elect to either follow the procedures under the contract or accept the repudiation at common law.

This principle even applies where a party determines a contract under a clause in the contract but fails to comply with the procedures set out in the determination clause. In such circumstances the determination may be rescued if the conduct complained of has in itself amounted to a repudiatory breach of contract, and thus the employer can be said to have exercised his common law rights.

The normal remedy for determination of a contract where one party has accepted the repudiation of the other is damages, and where the repudiation consists of a failure of a contractor to complete the works, the measure is the difference between the cost of completion (including any expenses incurred as a result of the determination) and the unpaid balance of the contract price: *Mertens v Home Freeholds Co Ltd (1921)*.

However, the difficulties of establishing what amounts to a repudiatory breach, coupled with the fairly restrictive events which do amount to such a breach, and the need to set down the rights and liabilities of the parties upon and after determination, has led to the position where all standard construction contracts now include an express clause for determination of the employment of the contractor, and next month I will look at those clauses most commonly found in Hong Kong forms of contract. [b](#)

As the Crow flies 以理想和熱誠作比翼，跌倒，再飛！

An Interview with Jim Yip, MRICS, AHKIS,
immediate-past JO Hon. Secretary



A linchpin in the Editorial Board and a champion for young surveyors' rights in the past two years, Jim Yip, our Immediate Past JO Hon. Secretary, is known for his unusually high energy level and creative flair. He represents a new breed of surveyors, hardworking and ebullient. Like many of us, he suffers, quite miserably, in this property carnage. But he never loses his faith in the property industry and the profession.

In this first interview of Meeting Point, he talks on a host of subjects, from his vision on JO, his unabashed criticism of the current APC practice, to his own stories in work and life.

On the Junior Organisation



Jim: The JO is a wonderful place. Here you can develop your networks, develop your presentation skills, you can hone your leadership skills, you can have your voice heard even at the General Council level and you can of course help other aspiring young

members. I regret I didn't join it earlier. But I had a very fulfilling time in the last two years.

I am very delighted that we now have more energetic young members in JO and I am sure 2003 will be another banner year for JO.

Most people label JO as a place for "not-yet-chartered" members with our main role to provide PQSL training to prepare them for the APC.

It is not true. But what's true is that we have not made much success in keeping young members who pass the APC. We need to beef up our efforts to attract young professionals. In this regard, I believe JO can borrow the experience of Victoria Junior Chamber and the



Toastmasters Club, by organizing more self-improvement events. Leadership skills and public-speaking training are two important areas we can work on. Also, young surveyors are interested in joining experience-sharing events with senior members. As you can see in the JO's January program, we are moving in that direction.

On motivating young members

Jim: We do many little things in JO to benefit our young members, for example, in our monthly JO meeting one student member is invited to make a 5-minute speech in English - it helps build their confidence. For every CPD and PQSL events, two JO members are asked to stand on stage to make an opening speech

and forthcoming events announcement - we seize every opportunity to train our presentation skills. We work hard to encourage more young members to write in the Newsletter and we work hand in hand with them in writing projects. We encourage young members to speak their minds, even though it may not be of our view.

Surveyor is a proud profession, we have been at the forefront of Hong Kong's success story, and with more inspiration and perspiration from all of us, we will keep this leading edge. The last successful JO annual party at Cyberport shows the creativity we have to instill the confidence of young members in our profession.

On the GP profession

Jim: Although property market fundamentals have changed a lot since the Asia Financial Crisis, little changes were witnessed in the surveying practice. Most of the valuation firms albeit few exceptions are still churning out the same old type of valuation reports, not much different from my first job in Jones Lang Wootton in 1989. Perhaps the long property boom before the 1997-property crash had made people shortsighted. Lacking the innovative drive and long-term investment on young members from the industry have seen our traditional business strongholds being eroded and yet unable to fight back. As a result, we compete on fees, not on new services; we turn to statutory protection to keep our job, not to new ideas to improve and add value to our services, making them an indispensable part of the clients' business.

We need to absorb more talents into our GP profession and move to meet changes in the market place. We have some undesirable practices that dent many young members' quest for our membership. The GP profession

encompasses a diversity of property specialties. We use our valuation expertise to negotiate land premium, rates and compensation, our marketing savvy to lease and dispose properties, our management know-how to enhance our investments, our development skills to roll projects, and our knowledge in property finance to create new liquidity in the market. We should really be an awesome force in property. Unfortunately, as far as the current APC format is concerned, we stumble on that rather badly. We need a new mindset to confront challenges in the new era!

On promoting the surveying course

Jim: We need to gear up our efforts to promote the profession to the public, the good starting point is to promote our degree course. The surveying course is simply fantastic and it is increasingly becoming more like an undergraduate MBA, with a good mix of taught subjects on technology, economic, planning, law, management, finance and valuation with a prime focus on property. Property is a pillar of economy in modern society. While paving the way to become a property professional, the course actually offers wider career choices for graduates. Simply because the skills and knowledge learnt in this course can apply in other fields. This beauty of two career choices - becoming a professional or a generalist - is not very often found in other courses. When we introduced this unrivalled flexibility of the surveying course to college students in our school visits, and when we told them the pivotal role played by surveyors in a development process, most of them started to get serious about a surveying career.

On reading

Jim: My all-time favorite writers are Jeffrey Archer and John Grisham. Jeffrey Archer is a magic writer. After reading his books you would want to plot a story. The story of his personal life is more dramatic than his novels, perhaps, that makes a great author.

Whatever you read doesn't really matter. Read as often as you can and better focus on something you have an interest in. I read a lot of political stuff from the Yahoo news coverage

- the site assembles news articles and commentaries from many sources, and you can learn arguments from different angles. I also read a lot of speeches, you must read these two: Al Gore's concession speech in 2000 US presidential race and UK Prime Minister Tony Blair's speech at the last Annual Labour Party Conference in Blackpool. You can find all of them by using Yahoo search.

On writing skills

Jim: Practice makes perfect and it is true. I used to write a daily journal for almost one year. The essence of journal writing is to capture your inner feelings and put them into words. Don't worry about the grammatical mistakes, just write and make it sound as your heart yearns. Once your writing passion grows bigger and bigger, in the form of always being hungry for reading and writing, you will improve your grammar. (Find out more about his views on English at his homepage <http://go.to/jimyip>)

On the most memorable event in life

Jim: I got into La Salle College by a cold call at the age of 15, two years after coming to Hong Kong from Guangzhou. I met the school principal, a big Irish brother, at the school gate and asked him for a Form 3 seat. Without a minute of thinking he ushered me to the school office for registration. Why was it so simple? Thanks to the 1997 Handover. In the mid 80s many Hong Kong families left the territory to secure foreign passports and this not only created the problem of a brain drain in business but also a student drain in classroom. The kind-hearted Irishman might have thought that for the good of society it would be better to put me in school rather than on the street. And he had some vacant seats to fill anyway.

Never be afraid to go beyond the obvious, beyond the norm and even beyond the impossible was the lesson I learnt from my first encounter with the school. Five happy school years followed from that day. (Story of his first

Jim YIP's Profile



Education:

Degree in Estate Management, Oxford Brookes University (1993)
Post-graduate Diploma in Project Management, College of Estate Management (1999)

Professional Qualification:

Member of Royal Institution of Chartered Surveyors (1997)
Professional Associate of Hong Kong Institute of Surveyors (1999)

Career:

1993 Joined Brooke Hillier Parker as trainee
1994 Joined Hutchison Whampoa Properties
1997 Investment Manager of a direct property fund
2001 Senior Property Analyst, Asia Financial Securities
2002 Senior Manager, BNP Paribas Peregrine

Public and Institute Service:

1989 Gold Award Holder of Duke of Edinburgh's Award Scheme
1997 Founder and Cub Scout Leader of 42nd Yuen Long West Group
2001 - 02 HKIS Editorial Board Member
2002 Hon. Secretary of Junior Organisation

school day at <http://www.lscoba.com/lasallian/articles/firstday.shtml>)

On mentors

Jim: I was lucky to have three good bosses as my mentors. They were all surveyors. Mr Nicholas Brooke was my first boss. His networking skills are unmatched. You may find it even harder to keep up with his pace in the Marathon race. (Mr Brooke's story at <http://hkis.org.hk/hkis/html/upload/Newsletter/v1oi7/action.html>)

Mr Jimmy Chan was my supervisor in Hutchison Whampoa Properties. He is modest and kind, but very tough when negotiating with tenants. The year of 1996 was very difficult for us, as the woe of recession had already crept in our leasing portfolio - Hong Kong International Distribution Center at Kwai Chung.

We lost some big tenants to the building next door and faced pressure on rents. Jimmy overcame the problem by re-branding the warehouse space as a modern logistic center. We successfully drew in new tenants from air-freight forwarders, partly helped by the relocation of Old Kai Tak airport to Chek Lap Kok. The rentals were better than previous.

Lastly, Mr Tony Tsui, my other Hutchison boss, is a great motivator and treats every junior member like a good friend. He is willing to listen to your problem and share his experience. (Mr Tsui's story at <http://hkis.org.hk/hkis/html/upload/Newsletter/v10i3/action.html>)

On career planning

Jim: I am delighted to be invited as a collaborator in a research paper "Real Estate Investment Trusts (REIT) in Hong Kong" conducted by Dr Y H Chiang and Dr Eddie Hui, two outstanding property professors from Hong Kong Polytechnic University. My main role is to seek support from our profession and the industry in a joint effort to promote more alternative investment vehicles in the Hong Kong property market.

This will provide a new business opportunity for surveyors. A lot of dotcoms mushroomed in the last internet craze. I believe the REITs development will set off a similar phenomenon in our property market. I am now setting up my real estate start-up to capitalize on this new opportunity. Compared with the dotcoms, real estate provides more transparent and sustainable returns. In a market condition of low interest rate and deflation, the return looks even more attractive and in most of the cases it is able to pay off the financing costs. Contrary to what most people think of the real estate business, it may not be capital intensive these days and the initial investment may be even less than a dotcom project. By focusing on acquiring niche properties that the market overlooks and using our asset management expertise to unlock their much-hidden income potential, I believe my real estate start-up will be self-sustaining in the first year. (His view on the future of Hong Kong property at <http://hkis.org.hk/hkis/html/upload/Newsletter/v10i11/feature.html#5>)

On his work motto

Jim: Samuel Johnson - Nothing will ever be attempted if all possible objections must be overcome.

On Youth Outreach

Jim: I was once a volunteer of Youth Outreach, an organisation to help kids who ran away from home, in 1999 and 2000. Emotionally, I wasn't any stronger than the youngsters we talked to at night in the parks or outside the convenience stores, I was running away from my own problems - my properties sunk deep in negative equity trap, tenants were defaulting and my job looked pretty shaky. No man can sincerely try to help another without helping himself. The Youth Outreach experience has helped me discover the true happiness in life and in the end I was released from the stress.



Receiving his DEA Gold Award at Government House in 1993.

Our senior member, Mr M Y Wan was one of founders of the Youth Outreach. I call him the Street Surveyor. He has inspired me to do more works for young members. (Mr Wan's story at <http://hkis.org.hk/hkis/html/upload/Newsletter/v10i6/action.html>)

On life and Surveyors Fellowship

Jim: Go to Lam Chuen Valley at this time of the year and you can see a sea of peach blossoms and feel the spring of life. Go to Sai Kung harbour at sunset hour where you can see a vibrant floating market. Fishermen standing on sampans tout fresh products to a crowd of tourists gathering at the pier. A life in harmony with nature. Despite all the pains and uncertainties we have to endure in this downturn, life hasn't changed much and it is

as beautiful as ever. The creator of this universe has prepared everything for us. Recently I joined the Surveyors Fellowship, which has a gathering once a month, and I find the experience so fulfilling. (Find out more about the Surveyors Fellowship from the story The Brick and Faith Approach at <http://hkis.org.hk/hkis/html/upload/Newsletter/v10i10/action.html>).



GOOD WORK

Written by Howard Gardner, Mihaly Csikszentmihalyi & William Damon
ISBN 0-465-02607-9



Around one year ago, a US energy trading company - the then seventh largest company in US - filed bankruptcy. Once hailed for its innovative business model, it was involved with fraudulent off-balance sheet activities and the scandal led to the demise of a top-class accounting practice. The collapse of the energy company had not only sparked a series of big corporate downfalls, but also seriously affected the livelihoods of thousands of employees. Since then, large corporations around the world have spawned a revolution in corporate governance issues such as improving the current mechanism of appointment of board of directors and tentatively entering stock options as expenses in the book to better reflect the profitability. On the other hand, the society demands more for good work - excellence and ethics in harmony.

If you find ethics is a subject that you do want to pursue or to see professionalism from a different angle, I sincerely recommend you to read this book - "GOOD WORK" written by three famous academics. A major thesis of this book is that "market forces have assumed overwhelming importance in today's professional work, and that increased emphasis on profitability has caused tension for employees." The authors have found that if the fundamentals of good work - excellence and ethics - are in harmony, we lead a personally fulfilling and socially rewarded life. If not, either

the professional or the community will suffer. The authors studied two sample professions, genetics and journalism, how they strive under pressure to do excellent work that still benefits society. The reason it was narrowed to two was to enable the authors to be more focused, but the findings apply to all other professions.

To do good work is supposed to be a natural goal for all of us, which is especially true for most of us working under the professional charter. Doing good works feels fascinating. Imagine how enjoyable it would be if we could concentrate on a difficult task, use all our skills, and know what has to be done.

But the modern world has been contended with rapid innovations and intrusive market forces, which had to a certain extent prohibited us to fulfill this. For example, a medical doctor believes that each patient needs to be seen until that patient has received a proper evaluation and diagnosis, but whose employer insists the doctor should schedule six visits per hour and penalizes him when he does not comply. Another example is when a journalist does not want to publish some private photos of a celebrity but his editor demands so because such publication would attract higher sales volume and advertising. What options would this medical doctor or journalist have in such situations?

The book has one chapter on the development of professional realm, which you should find very interesting. It mentions that becoming a professional involves a bargain between a person and the community. People agree to provide needed services; the community agrees to compensate them for the services and recognize their right to perform those. However, the relationship between practitioners and the public they serve is always in a delicate balance, with the professionals interested in securing more rights and the public seeking better services. Over time, the tension can either result in a fruitful synergy or degenerate into conflict.

Facing rapid technological revolution and

powerful societal trends, what can good workers do? The book reveals four key elements that could lay the foundation for good work in our times. There is a need for development of the individual in respect of competence and character. To become an expert, one must develop skills, techniques, and understandings that are critical to their chosen professions. But we look for marks of character as well. With strong character, one might have an inner set of values, a moral compass to face difficult issues. It also suggests the development of two potentials: differentiation and integration. A differentiated person is competent, has character, and has achieved a fully autonomous individuality. An integrated person is someone whose goals, values, thoughts, and actions are in harmony; someone who belongs to a network of relationships; and someone who accepts a place within a system of mutual responsibilities and shared meanings. I believe all our members are trained with these 4 key elements, so our profession is viewed as good: good to our industry and good to our society.

This 292-page book might take you a little more time to absorb (at least I did) because this is an academic research backed up with detailed questionnaires and findings. But its message on the importance of Good Work is clear and useful to all our Surveying members. First published in hardcover one week before the 9/11-event in 2001, you can now buy the 2002's paperback version, which includes one additional chapter on the reflection of the authors' view on the aftermath.



For those who are interested to see the story behind the debacle of Enron Corporation, you can read it from this website: http://news.bbc.co.uk/1/hi/english/static/in_depth/business/2002/enron/timeline/default.stm 