

# Building Surveyors

建築測量



## MESSAGE FROM THE EDITOR

By Edgar Li

No news is not a good news??! You will agree this statement if you read the announcement of this BS Newsletter. Our BSD is pleased to announce our great events including the coming annual dinner, innovative compact disk produced for BS Conference and the sponsorship for attending overseas conferences. All of these activities are well suited for our members. In addition, the Editorial Board wishes to give our thanks for the continuous supports from our senior members to contribute the invaluable articles relating to facilities management and arbitration.

The Editorial Board is calling for editorial contribution from

our members in the coming publications. If you wish to submit your article, please contact the editor directly.

## Editorial Board

<b>Alan Sin</b>	<b>(Editor)</b>
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<b>Edgar Li</b>	<b>(Member)</b>
<b>Wong Kam Wah</b>	<b>(Member)</b>

## ANNOUNCEMENT

### BS Annual Dinner 99

The Annual Dinner will be held on 30 November 1999 (Tuesday) at Hong Kong Football Club, Happy Valley, Hong Kong. This is no longer a usual dinner. You can take all the gifts by joining our lucky draw and a series of wonderful games. There will also be a presentation of awards to the best APC practical task candidates. Last year, the annual dinner did attract a number of members and costed HK\$300 per member. This year, the incredible low price is only HK\$180 per member. Come on, don't miss the chance!!! You are very welcomed to join us.

Reservation form has been mailed to all members. For inquiries, please contact Mr Edgar Li at phone no: 2839 7606.

### Sponsorship for Overseas Conference

Another good news to our members!

Our Building Surveying Division is going to recommend our BS members, to the General Council of HKIS, for sponsorship as our official delegates to attend the relevant conferences held at overseas. It intends to enhance and widen professional knowledge of building surveying as developed in Hong Kong. The Council of the Building

Surveying Division will oversee this recommendation process and issue a guideline for conditions of sponsorship later. The following conferences has been under consideration for this purpose:

- \* "WOBO's 5th World Congress" to be held at Dubai on 26 - 29 March 2000.
- \* "International Conference, Construction Information Technology 2000" to be held at Reykjavik, Iceland on 28 - 30 June 2000.
- \* "Habitus 2000" to be held at Perth, Australia on 5 - 9 September 2000.
- \* "International Symposium Providing Facilities Solutions to Business Challenges - Moving Towards Integrated Resources Management" to be held at Brisbane, Australia on 15 - 17 November 2000.

Inquiries and suggested conferences should be sent to Dr. S M Lo of Department of Building and Construction, City University of Hong Kong, Tat Chee Avenue, Kowloon Tong, Hong Kong, or fax (852) 2788 7612, or e-mail bcsml@cityu.edu.hk.

### Voluntary BS Professional Advice at the Second Building Management Resource Centre (BMRC)

Some of our senior members have provided free expert advice at the first BMRC in Kowloon since June 1998. Due to the increasing demand for the services, the Home Affairs Department will operate the second BMRC in Central, Hong Kong from November 1999. The Centre provides advice to the public on matters relating to building maintenance, building safety, building renovation and repairs, etc. Any professional member who is interested to provide the voluntary professional advice at the Centre, please contact our BSD Chairman, Mr Kenneth Chan at tel no. 2507 0581.

### Compact Disk - BS Conference 1999 "Managing 21st Century Building Facilities"

The first issue of CD by our Building Surveying Division has been well prepared for the above conference. This innovative publication contains the most up-to-date materials for examining the developments in the management of modern

building facilities. The disk is now available for sale at the price of HK\$50 at the office of the HKIS. Students can get a special discount at the price of HK\$25.



## Communication Network and Job Movement

The Newsletter will report job movements of members. If you wish your job movement be published, please fax or e-mail the details (e.g. name, previous company name, new company name, telephone no., fax no. and e-mail address) to Gordon Wong.

(Fax : 2714 3328; e-mail : gsywong@hkstar.com)

### HONG KONG BUILDING SURVEYORS COMMUNICATION NETWORK

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HK Academy for Performing Arts	Nelson S. L. HO	2584 8690	2824 2651
HK Polytechnic University	K.K. LO	2766 5878	2764 5131
HK University	Daniel HO	2859 2128	2559 9457
HK University of Science & Technology	Roger DAVIES	2358 8431	2358 1450

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Crafer Dillon	Sean Dillon	2866 6460	2866 1948
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C. Y. Leung Project Services	Kenneth CHAN	2507 0507	2147 3859
Danny Kwok & Associates	Danny KWOK	9026 5008	2512 8415
David C Lee Surveyors	David LEE/ Vincent HO	2802 8336	2802 8270
DCL	Daniel LAM/ Kenny KONG	2516 7868	2565 9890
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Lee Mark & Associates	LEE Chun Fat	2827 8222	2827 8773
Multiple Surveyors	Benson WONG	2840 1022	2877 2811
Prudential Surveyors International	Dennis WONG	2507 8303	2598 6576
Raymond Chan Surveyors	Raymond CHAN	2722 7270	2311 3436
Raymond Cheng Property Consultants	Raymond CHENG	2610 0626	2610 0779
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SLJV	Samson WONG	2577 0503	2890 5469
Spence Robinson	Kenneth CHAN	2544 7007	2543 9975
TMK & Associates	TANG Hau Ki	2377 1970	2377 1625
Vigers Hong Kong	Kenny Suen	2377 1234	2377 3166
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H.K. Land	Albert FONG	2842 8157	2845 9226
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Hong Yip	John HO	2828 0810	2827 6300
Kai Shing	Gordon LEE	2828 5133	2827 1702
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LDC	Chris CHEUNG	2588 2839	2827 0176
MTRC	CHAU Sai Hung	2759 7591	2305 4457
Tung Wah Groups of Hospitals	Cheuky Cheuk	2859 7753	2548 5710
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Judia Construction Co., Ltd.	John CHUNG	2854 0608	2543 3630
Tactful	Boris YEUNG	2381 5098	2381 0019

Sept 1999



## Message from Facilities Management Panel

### Introducing Facilities Management Benchmarking Research In the Asia Pacific Region

by Daniel C.W. HO, M.W. Chan, Edwin H.W. Chan and Nicole Wong

*This article is a summary of a paper presented in the Building Surveyors Conference 1999 held on 16th October, 1999, Hong Kong.*

#### Introduction

Whether the origin of benchmarking was from the Chinese saying in Sun Tzu's *The Art of War* or the story of Xerox in 1979, competitive benchmarking has become more popular than ever. Benchmarking is the search for the best practices that will lead to superior performance of an organisation (Camp, 1989). Competitive benchmarking is the identification of performance gap between the company under benchmark and the best in industry (or major competitors). Metrics are specific standards of measurement in areas such as production cost, retail selling prices, cost per employee etc. which are used to rank in relation to the benchmarking partner(s). Any FM item which is likely to affect the organisation will be a target for FM benchmarking.

#### Benchmarking FM Research in the Asia Pacific Region

The aim of the study is to find out perception and the extent of use of FM benchmarking metrics in large corporations in the Asia Pacific region. *Benchmarks III* (1997) by the IFMA is a good source for key indicators and cost categories for FM benchmarking. A questionnaire survey is used to solicit views of major corporations on the perception and use for a list of benchmarking metrics. Items investigated included aspects on

size and use of facilities, maintenance, cleaning, energy consumption, safety and security etc. Respondents are asked to indicate how important is each item as far as FM benchmarking is concerned and then indicate whether the item is used in benchmarking or not. Views of 709 leading corporations considered leaders in their respective industries were obtained by a postal survey conducted between January and June, 1998.

#### Preliminary Observations

The response rate is disappointingly low at 3.37 percent (24 questionnaire returned). Return rate from Japan is only a little more than zero, with language barrier being suspected as the main reason (the questionnaire was in English). Countries with higher return rates such as Hong Kong and Singapore are all ex-British colonies, sharing the same heritage in many aspects such as official language, legal system and business practices, etc. Nevertheless the low response rate may be attributed to the lack of understanding or low use of benchmarking among Asia Pacific corporations. The top-ten criteria perceived as the most important by the respondents for benchmarking FM in the region is presented in Table 1. All criteria ranked in top-ten come from the categories 'Size and use of facilities', 'Maintenance', 'Refurbishment' and 'Cleaning'. As far as the importance of metrics is concerned, costs and budget related metrics dominated the front portion of the list. In addition, the FM function might not have been considered as part of the company's business strategy. The first metric of such kind, 'facility budget as a ratio of corporation budget', is ranked 23rd. The average use rate for the top-ten criteria is 83%. One sees that in general trend, metrics viewed as important are used more in actual practice.

List of top-ten criteria

Ranking	Name of criteria	Averaged importance rating	Use rate in FM practice (%)
1	Total annual facility cost	4.35	79
2	Total maintenance expenditure	4.25	96
3	Total cleaning cost	4.13	92
4	Initial cost	4.10	79
5	Operation cost	4.08	100
6	Cleaning expenditure/m <sup>2</sup>	4.05	63
7	Total refurbishment cost	4.04	79
8	Asset replacement value	4.00	79
9	Annual income	4.00	75
10	Gross floor area/usable floor area	4.00	88

## Conclusions

Based on the low response rate in this study, it is not able to conclude the extent to which large corporations in the Asia Pacific region have used benchmarking metrics for FM. Nevertheless, the study helps to build up the list of metrics for compilation of benchmarking data in future. The results also indicated a lack of practice of benchmarking with external organizations because FM measurements are regarded as more important than indicators. Phase two of the research will investigate on the reasons for the above observations. Further research may be carried out to identify the difference in value on FM benchmarking between countries of the Asia Pacific region. A model of metrics for benchmarking FM may be developed which can be adapted for use by individual companies within the region.

*The study is funded by the Hong Kong Research Grant Council (RGC) Competitive Earmarked Research Grant 1996-1997 (HKU 44/96E).*

## References

Camp, R.C. (1989) *Benchmarking: The Search for Best Practices that Lead to Superior Performance*, *Quality Progress*, January to May 1989.

International Facility Management Association (1997) *Benchmarks III*, I.F.M.A., Houston, Tex. Property Council of Australia (1998) *Benchmarks 1998 Survey of Operating Costs, Sydney Office Buildings*, Property Council of Australia Ltd., N.S.W. Division.

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## RELEVANT PUBLICATION

### RELEVANT PUBLICATION

*By Edgar Li*

#### Consultation Paper on the Urban Renewal Authority Bill (Oct 1999)

This Consultation Paper sets out the main points in the Urban Renewal Authority Bill. This booklet contains a copy of the Bill which has just been published in the Government Gazette in the form of a White Bill for the purpose of public consultation. There are several proposals on urban renewal relevant to our profession. It includes the following considerations:

(1) Relaxation of plot ratio control to enhance financial viability of projects;

- (2) Exemption of GFA calculations for GIC facilities within the project area;
- (3) Introduction of new planning procedures for processing the development proposal; and
- (4) Application for direct resumption of the land acquired.

*Available for obtaining a copy at web page <http://www.pelb.gov.hk/images/eng.pdf>*



## Feature

### Student Surveyors' Bulletin

By James Kenneth Pong

*Lower threshold for domestic arbitration agreement to stay legal proceedings under the new Arbitration Ordinance 1997 (Cap 341)*

The phrase "stay of legal proceedings" reminds me those days when I was pursuing my surveying degree in the college. I presume that you have already learned or are learning s.4 of the Arbitration Act 1950 (as amended by s.4 of the Arbitration Act 1975), or s.9 of the new Arbitration Act 1996 or their similar counterparts of Hong Kong legislation.

I recently had a domestic case in applying for a stay of legal proceedings in favour of arbitration. "The gist of the case was that there had been exchange of correspondences between the Plaintiff ("Sub-contractor") and the Defendant ("Main Contractor") before the formal sub-contract document was prepared. That document contained, inter alia, contract provisions that have incorporated within them an arbitration clause, the letter of intent, the letter of acceptance and the various correspondences so exchanged before the preparation of that formal sub-contract document.

The problem was: even when the contract work was completed in strict adherence to the sub-contract, the sub-contract document had not yet been signed! it is unfortunately quite common in Hong Kong. Now the Plaintiff is instigating legal proceedings against the Defendant for certain claims. Can the Defendant stay such proceedings in favour of arbitration?

The first hurdle facing the Defendant is: was there a valid arbitration agreement? An arbitration agreement is defined by article 7 of the UNCITRAL MODEL LAW, which has been incorporated into any domestic arbitration agreement by virtue of s.6(1) of the Arbitration Ordinance 1997, as "an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement"

Must an arbitration agreement be in writing to make it valid? s.2AC(1) of the Arbitration Ordinance 1997 stipulates that in order to be a valid arbitration agreement it must be in writing. I have no problem with my case because the arbitration clause was in fact in writing.

Must an arbitration agreement be signed to effect its validity? The answer must be in the negative because s.2AC(2) of the new Arbitration Ordinance 1997 states that an arbitration agreement is valid if it is in writing and:

- (a) the agreement is in a document, whether signed by the parties or not; or
- (b) the agreement is made by an exchange of written communications; or
- (c) although the agreement is not itself in writing, there is evidence in writing of the agreement; or....etc"



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In Hong Kong case *Trans-Media Pharrna Handelagesells charft MBH v Ananda Pharmaceuticals & Chemicals Ltd* (1990), it was held that it was not necessary for an arbitration agreement to be signed. In another Hong Kong case *Gay Constructions Property Limited and Another v Caledonian Techmore (Building) Limited and Hansion Construction Co Ltd* (1995), it was held that it was possible to have a valid arbitration agreement if there was ample exchanges of letters providing a record of the agreement. These principles have all been incorporated into the new Arbitration Ordinance 1997.

Finally, was there an agreement to arbitrate at all? If there is a valid sub-contract, then there is an arbitration agreement since it is part and partial of the sub-contract. Vice versa, there is no arbitration agreement and either party is deprived of his right to refer any disputes to arbitration. Although the sub-contract has not yet been signed, there was letter of intent and letter of acceptance referring to the detailed tender so furnished by the sub-contractor. Furthermore, both parties observed the contract provisions strictly for instance the retention clause and payment clause etc. Above all, construction contract is not a land contract or other specialty contract that requires anything in writing at all. Neither party can therefore deny the existence of the sub-contract.

The second hurdle is: what sort of dispute the threshold beyond which a party to the arbitration agreement can successfully

refer such dispute to arbitration? Let me side-track my flow of narrative a bit by pointing to all student surveyors that since 30 June 1997, the decisions of the House of Lords have no longer been binding on the courts of Hong Kong, although article 84 of the Basic Law permits the court to refer to precedents of other common law jurisdictions. Thus in the Hong Kong case *Westco Airconditioning Ltd v Sui Chong Construction & Engineering Co Ltd* (1999), certain dicta of Lord Mustill in *Channel Tunnel Group Limited v Balfour Beatty Construction Ltd* (1993) were not followed. It is for this reason all cases quoted in this article are local ones.

In *Schindler Lifts (Hong Kong) Ltd v Shui On Construction Co Ltd* (1985), the Court of Appeal held that the judge's concern that it would be useless to stay the proceedings because the matter would come back before the court on a case stated for construction of the contract was ill-founded in that the Arbitration Ordinance (at that time) had been amended to remove the power of an arbitrator to state a case for the consideration of the High Court.

For many years, whenever there were two concurrent applications for summary judgment (i.e. under legal proceedings) and stay of legal proceedings in favour of arbitration, the stay would only prevail if there was a real dispute, i.e. an arguable issue. Now by virtue of s.6(1) of the Arbitration Ordinance 1997, article 8 (1) of the UNCITRAL Model Law applies:-

"A court before which an action is brought in a matter which is the subject of an arbitration agreement shall.....refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed."

In fact, before the new Ordinance emerged, there has already been some court decisions pointing in that movement, albeit not precisely. In *Pilocon (Hong Kong) Ltd v Mightyton Ltd* (1992) which held that before a party to the legal proceedings had the right to apply for a stay of the proceedings, the subject matter of the proceedings had to be in respect of any matter which the parties had agreed to be referred to arbitration. If there was no dispute at the commencement of the proceedings, there was nothing which had been agreed to be referred to arbitration and the subject matter of the proceedings was not yet a matter which the parties had agreed to be referred to arbitration. Hence s.6 of the Arbitration Ordinance would not apply and neither party would be entitled to apply for a stay of the proceedings. Only if there was a dispute or difference in existence on the date of the issue of the writ. Could a stay be granted under s.6? In *Joong and Shipping Co Ltd & Choi Chong-sick v Chu Chin-Ho, t/a Chang Ho Co* (1994), Mr Justice Kaplan held that: (1) if there is anything in dispute between parties who have agreed on arbitration, then it is only right and proper that they should be held to their contractual

bargain to have the disputes resolved by arbitration and (2) on the other hand, if there is no dispute between the parties, there is nothing to go to arbitration and it is appropriate to grant summary judgment. This can only be the approach if there is a clear admission as to liability and quantum. Although both of these decisions swayed towards disputes be resolved by arbitration, they did not attempt to define precisely what constitutes a "dispute".

The post-1997 threshold is set by the new Arbitration Ordinance 1997 which adopts the UNCITRAL MODEL LAW article 8, which has been incorporated into most of the international arbitration agreement for years, into all domestic arbitration agreement. In *Louis Dreyfus Trading Ltd v Bonarich International (Group) Ltd* (1999) Mr Justice Waung held that the proper approach for the court when faced with parallel applications of summary judgment and arbitration stay was to apply the test laid down by the Court of Appeal in *Tai Hing Cotton Mill Ltd v Gleneore Grain Rotterdam BV* (1996) in which Bokhary JA said:

"Under Art 8(1) of the Model Law, the court is not concerned with investigating whether the defendant has an arguable basis for disputing the claim. If a claim is made against him in a matter which is the subject of an arbitration agreement and he does not admit the claim, then there is a dispute within the meaning of the article. And if he seeks a stay of the action the court must grant a stay unless the plaintiff can show that the arbitration agreement is null and void, inoperative or incapable of being performed."

Taking the literal interpretation, this stretches the meaning of the word "dispute" to another limit which simply means that whenever a party to a domestic arbitration agreement denies a claim, it will constitute a dispute. At the election of either party, that dispute must be referred to arbitration and I am afraid that the judges do not have any leeway. If the party has no merits in his case, he is bound to lose in the arbitration and he will be ordered to pay the costs.

In the premises, the previous threshold of real dispute or arguable case for domestic arbitration agreement no longer holds. The new threshold is simply a claim within the ambit of an arbitration agreement and one party does not admit it. In my case, this fine legal concept was not particularly addressed to by the judge because my client (Main Contractor) had an arguable case anyway. However, I am confident that there will be a domestic test case in the near future to engrave such precepts on stones.



## A BRIEF SUMMARY TO PRACTICE NOTES AND CIRCULAR LETTERS ISSUED FROM 15 JUNE 1999 TO 15 OCTOBER 1999

Wong Kam Wah

### PRACTICE NOTE FOR AP AND RSE ISSUED BY BUILDINGS DEPARTMENT

#### 79 Computer Programs for Use in Structural and Geotechnical Design

*This revision June 1999*

A set of new standard pro forma is attached in the Appendix of the Practice Notes including:

- a) Pro forma for application for prior-acceptance/ renewal of structural/ geotechnical computer program;
- b) Structural Computer Program Statement;
- c) Geotechnical Computer Program Statement.

This revision also states that the renewal of prior acceptance and changes to pre-accepted programs may be made upon expiry, but not earlier than four months from the expiry date.

#### 211 Planning and Design of Drainage Works

*This revision June 1999*

The first issue of this practice notes sets out the requirements regarding the planning and design of the alignment of common drains for new buildings. This revision advises APs to take into consideration the need for maintenance and repair when designing other drains and plumbing systems in addition to common underground drains.

#### 227 Structures On Grade on Newly Reclaimed Land

*First Issue April 1999*

Guidelines are given for processing submission involving structure on grade on newly reclaimed land, including design rules, settlement assessment and monitoring. It would take immediate effect for the building developments for which the application of consent for the foundation works has been submitted after 15 May 1999.

APs should also alert the developer the long-term consequential maintenance implications and advise him to inform the prospective buyers.

#### 234 Geotechnical Manual for Slopes Guidance on Interpretation and Updating

*First Issue June 1999*

Guidance is given in the Appendix of the practice notes on the interpretation of some aspects of the Geotechnical Manual for Slopes (2nd Edition).

The term "risk" is replaced by "consequences" for consistency with international usage. A new and combined notation for safety factor of slopes in terms of "consequences-to-life" and "economic consequences" is also described in this Appendix.

#### 237 Corruption Prevention

*First Issue July 1999*

This Practice Note draws the attention of APs and RSEs' the need to combat corruption in the construction industry. APs and RSEs are also reminded to report to ICAC immediately when they or their staffs are offered a bribe.

### Editorial Contributions

"Building Surveyors" encourages article queries and submission. Article submissions should include both hard (printed) copy and a diskette in word format. Contributors should contact the editor, Mr. Alan Sin at Tel. 2773 2607 or Fax. 2765 7153

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