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The 2004 Fred Kan & Co. prize for the best dissertation submitted for the degree of MSc in Environmental Management at the University of Hong Kong was awarded to Jason Chi-hin Chan. The topic of Mr. Chan's dissertation is Assessing Corporate Environmental Risks in China: An Evaluation of Reporting Activities of Hong Kong Listed Enterprises. An article based on the dissertation has been published on the internet by the Centre of Urban Planning and Environmental Management, University of Hong Kong. In this edition we consider the main points made in that article.

The Editors

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Corporate Environmental Reporting: A Fundamental Requirement for Improved Corporate Governance in China.

Increasingly, sound environmental management is viewed by regulators and investors as an essential part of good corporate governance. Investors will be more aware in the future of the environmental performance of companies, particularly in respect of companies in China, where rapid economic growth, combined with the fragility of China's environment, accentuate the need for companies to avoid causing environmental damage and to avoid breaching the tougher environmental regulations which China is gradually imposing.

Investors will in future expect public companies fully to disclose in their company accounts details of their environmental performance.

Consideration of Hong Kong companies' performance in this regard should give some indication of what to expect from Mainland companies. Analysis of 219 enterprises which listed on the Hong Kong Stock Exchange (HKSE) between 1997 and 2001 suggests that, to date, there is poor recognition by Hong Kong companies of both the financial and good governance necessity to address fully and frankly their environmental responsibilities in their published reports.

Hong Kong and China are firmly linked politically and by trade. Hong Kong is closely connected to the economic development of China as a whole and to the environmental integrity of China. This is so because their production bases usually depend heavily on China for the supply of raw materials, manufacturing services and other aspects of their business. Therefore, environmental risks in China are also relevant in a financial sense to the Hong Kong securities

market, as well as in the environmental sense to communities in China and Hong Kong.

There is a growing world-wide awareness on the part of investors that companies with a good corporate governance culture are more worthy of investment. An integral component of a company's corporate governance is the way in which it approaches its responsibility to the environment. Sound environmental management is a vital part of good corporate governance, in the eyes of ethically motivated investors, who are in fact becoming more influential in world markets. An indication of a company's approach to environmental issues is the prominence given to environmental factors in company reports and other such public documents. The reporting documents of 210 companies listed in Hong Kong were researched to provide the raw data for the observations and conclusions of the authors, some of which are referred to below.

Environmental risks and Chinese corporations

Apart from an essential social responsibility to avoid damaging the environment, companies conducting business in China are bound to comply with numerous, and expanding, laws enacted by China for better environmental protection. A company which emits by-products, discharges waste, uses energy or consumes natural resources will be controlled by environmental regulations in China. Non-compliance with these regulations can lead to the imposition of fines and even payment of compensation in the event of assessable environmental damage. Chinese authorities also have the power to impose remedial requirements, such as clean-up orders and suspension or non-renewal of pollution permits.

There is a direct financial incentive for Chinese authorities to tighten their environmental regulations and their enforcement. The World Bank has estimated that damage caused by water and atmospheric pollution - leaving aside the numerous other forms of pollution and natural resource destruction - costs China US\$54 billion per year, which is approximately 8% of China's GDP.

If China follows the European path, its regime of environment regulations is likely to be strengthened yet further.

Whilst Chinese authorities have increased the scope of environmental regulations dramatically over recent years, they still do not have in place legislation equivalent to the now famous American Superfund laws, which were implemented following incidents of severe environmental degradation revealed in the Love Canal case in the 1970s. Jurisdictions in other developed countries have also moved to introduce similar legislation to Superfund, e.g. British Columbia (Canada) and New South Wales (Australia). The European Union has gone further by issuing directives requiring distributors and manufacturers of certain potentially toxic products to separate, recover and take-back waste generated by their products.

If China follows the European path, its regime of environment regulations is likely to be strengthened yet further. This in turn means that long-term investors are unlikely to ignore the possibility of Superfund-style strict liability laws being introduced at some time in China. Against that background, companies which display a responsible attitude to

environmental factors affected by their business are likely to be more attractive to investors.

There is also the danger for corporations which choose to carry on business while ignoring environmental responsibilities that their brand names will suffer as a result. As consumers in China, Hong Kong and elsewhere place growing importance on environmental responsibility, manufacturers and retailers which ignore this component of their corporate governance will cause harm to the public image of their products.

Thus, ignoring responsible environmental management will expose corporations in China and Hong Kong to at least two forms of financial risk, the investment and brand name risks.

Analysis of Hong Kong companies' environmental reporting

Between 1997 and 2001, 219 companies were newly listed on the main board of the HKSE. These companies represent a broad range of manufacturing, financial, general service and other industries.

Two forms of public reporting documents were considered to give an insight into the priority 210 of these companies placed on their environmental responsibilities:

- (i) prospectuses issued for initial public offerings (IPOs) and
- (ii) subsequent annual reports for the years 2001/02 or 2002.

Broadly speaking, there is a much higher incidence of addressing (although, not necessarily adequately) environmental issues in IPO documents than in subsequent annual reports, as is indicated by the following table.

Table 1: Industrial Distribution of Companies Listed in Years 1997-2001 Disclosing Environmental Information during IPO and at Annual Reporting 2002.

Industry	During IPO		At Annual Reporting, 2002	
	No. of Companies	% Disclosing	No. of Companies	% Disclosing
Oil, Energy, Resources and Utility	11	100	12	66.6

Construction, Transportation & Infrastructure	29	51.7	30	20
Heavy Industry	18	77.8	18	22.2
Light Industry	81	30.9	85	4.7
Wholesales, Retailing and Trade	23	8.7	26	308
Real Estate	17	0	17	0
Banking, Finance & Insurance	17	0	17	5.8
Telecommunications, Media and Information Services	19	0	21	14.2
Others	7	0	8	0
Total (conglomerates with multiple business counted as one company)	210	32.9	219	12.3

Environmental risks for the sample companies

For the purpose of analysis of the data, companies were considered to face four categories of environmental risks: regulatory (i.e. compliance and liability for non-compliance) risks; investments risks; brand name risks; all other risks, e.g. adverse impact on business from perceived lack of transparency on environmental issues. It follows that companies could be exposed to more than one category of risk. Retailers will always have a brand name risk, but as well might be exposed, for example, to regulatory risk. The exposure to risks analysis is set out in the following table:

Table 2: Distribution of Risk Exposure of Companies Listed in Years 1997-2001 Disclosing Environmental Information during IPO and at Annual Reporting 2002.

Risk Exposure of Companies	During IPO		At Annual Reporting, 2002	
	No. of Companies	% Disclosing	No. of Companies	% Disclosing
Compliance	101	61.4	106	18.86
Brand name risks	97	7.2	100	3
Investment risks	26	0	26	0
Other risks	29	3.5	33	12.12
Total (conglomerates with multiple business counted as one company)	210	32.9	219	12.3

An interesting comparison is that companies facing regulatory risks were responsive to the need to report the risk to the public, with 61.4% of them disclosing such risks during the IPO. However, only 7.2% of companies with a perceived brand name risk addressed the issue of dealing with the risk; that is, dealing with the need to enhance their good will in the face of the poor environmental indication.

At least 43 of the sample companies appeared to be exposed to more than one class of environmental risk. Of the 40 companies facing both regulatory and brand name risks, only 2 responded in their public documents to both classes of risks, while 13 responded only to regulatory risks, and 2 responded only to brand name risks.

Analysis of annual reporting in 2002 shows that companies with regulatory risks remained the keenest disclosers of environmental matters, although the rate of disclosure (19%) was

significantly lower than the rate at the IPO stage.

Extent of disclosure

The data also revealed considerable differences in the extent to which companies disclosed environmental risks, or generally addressed environmental factors in their public documents. In some cases the report contained just a few sentences to the effect that the directors believed that environmental laws had been complied with. On the other hand, a number of companies provided detailed accounts of impacts on the environment resulting from their business activities, and procedures taken to redress the impacts. Some companies provided financial data relating to the environmental impact of their business, some times verified by third parties, such as their accountants.

In summary, the information disclosed by companies in respect of the environment fell into 9 broad categories: environmental liabilities;

environmental impacts of business activities; environmental accounting information; third party verification or audit; environmental awards; impact abatement measures; human resources for environmental protection; environmental goals and plans; and environmental business strategies. The authors note that:-

“Paradoxically, although quite a number of companies realise that investors and potential investors may be concerned with environmental liabilities, few provided sufficient details to enable investors to assess the ability of the companies to hedge against environmental risks and to cope with tightening regulatory requirements”.

It was also noted that very few of the 47 companies which addressed environmental issues at the IPO stage had bothered to obtain third party verification of their management levels, such as ISO14001 certification.

Reporting during the IPO also generally failed to address likely future environmental liabilities or environmental insurance costs. Similarly, very few companies spelt out their intended expenditure on environmental issues, such as for controlling impacts from their discharges or from other aspects of their businesses.

One of several other criticisms the authors made of the level of sophistication of environmental reporting at the IPO stage is that seldom did companies integrate environmental issues and management into their corporate goals and business strategies. Only 2 companies actually stated their environmental goals in their prospectuses.

Disclosure during annual reporting was found to be, generally, even more unsatisfactory. Less than 1% of the companies studied referred in their annual report to future environmental liabilities, and none disclosed that they were formulating plans to comply with expected more stringent regulatory requirements in the future. Integration of the environment and business strategies remained rare in the annual reports.

Of the Hong Kong companies sampled, only 10% addressed environmental issues in their annual reports (for the years considered). In stark contrast, as far back as 1992 48% of Finnish industrial and resource enterprises addressed environmental factors in their public documents.

Inadequate environmental disclosure in China

Many studies over recent years have shown that disclosure of environmental information by companies in China is inadequate. Reference to environmental issues by companies in their public documents usually consists of a general description. The companies do not, for example, address negative externalities of business activities - such as a poor environmental corporate image - which could be translated into traumatic financial implications for the company in the future.

One reason for the poor environmental reporting in China is

that accountants there are still reluctant to incorporate environmental issues into accounting methods, and so voluntary environmental disclosure is rarely an issue for accountants.

The way forward

The study reveals a marked tendency for Hong Kong companies to underestimate environmental liabilities and the long-term impact of environmental regulations on corporate affairs. Underestimation of a company's real financial liabilities, in the context of China - where environmental pressures are becoming acute, and regulations are likely to be made stricter - is of particular concern. There is a low level of corporate transparency on the Mainland, where enterprises are reluctant to provide thorough assessments of their activities - including in respect to the environment-- to potential investors.

In Hong Kong, the reporting responsibilities of companies is governed by the listing rules of the HKSE. However, these are merely general principles or guidelines. Consideration should be given to enacting legislation to compel companies to provide environmental information in their public documents. Norwegian law already requires such information to be published, even when separate environmental reports are published by the company. There, the mandatory information required includes data on the company's, energy and material consumption, its waste emissions, its environmental "accidents" record and known environmental impacts of its products. Swedish law has similar provisions.

More research would need to be conducted in China and Hong Kong for similar legislative reform to be brought in. However, in a sophisticated financial centre such as Hong Kong, there is already sufficient data for regulators immediately to review the present requirements for corporate environmental disclosure, which is in itself an important step in improving corporate governance in general. Improvement in this regard in Hong Kong will immediately impact corporate governance in China as well, because so many Hong Kong listed companies have business activities there.

Currently, Chinese corporations consistently fail to provide sufficient environmental information for investors to assess a company's environmental performance. Without such information, investors in China-based companies are taking significant risks. The gap between actual environmental risks and disclosure is also detrimental to both the securities market and improvement of better corporate governance in China. The adequacy of environmental information provided by listed companies will also be central to the competitive edge of Hong Kong's and China's securities markets in the future, particularly in the face of fierce competition from other international financial centres.

[We acknowledge the kind permission of Jason Chi-hin Chan and co-author Richard Welford in allowing us partly to reproduce and to draw on their article.]

LEGISLATION DIGEST

TOWN PLANNING (AMENDMENT) ORDINANCE 2004

(Ordinance No. 25 of 2004, Gazette No. 30 of 2004)

Summary:

The object of the Amendment Ordinance is to amend the Town Planning Ordinance (the "Ordinance"). The Amendment Ordinance comes into operation on a day to be appointed by the Secretary for Housing, Planning and Lands by notice published in the Gazette.

The following new sections are added or substituted: -

Section 2B:

The Town Planning Board (the "Board") may transact any of its business by circulation of papers among its members, unless the holding of a meeting is required either by an express provision of the Ordinance or by necessary implication from any provision of the Ordinance.

Section 2C:

All meetings of the Board shall be open to the public unless, inter alia, such open meetings: -

- (a) would not be in the public interest;
- (b) would result in premature release of information that would prejudice the position of the Board, the government, the Chief Executive or the Chief Executive in Council;
- (c) would result in a disclosure of information in breach of any duty of confidentiality owed to any person by the Board or the government;
- (d) would result in a disclosure of information in respect of which a claim to legal professional privilege could be maintained ; or
- (e) would be relevant to the institution or conduct of any legal proceedings.

Section 6:

Within the period of 2 months during which a draft plan is exhibited, any person may make representation to the Board in respect of such plan. After the expiration of the 2 month period, the Board shall make all submitted representations available for public inspection.

Section 6A:

Within the first 3 weeks of the period during which representations are available for public inspection, any person may submit comments to the Board in respect of such representations.

Section 6B:

The Board shall hold a meeting to consider the representations as well as the comments as soon as reasonably practicable after expiration of the comments period of 3 weeks.

On consideration of the representations and comments, the Board shall decide whether or not to propose amendments to the draft plan in question in the manner proposed in the representations or otherwise in a manner that will satisfy the representations.

Section 6C:

Where the Board proposes any amendments to the draft plan, the Board shall as soon as reasonably practicable make the proposed amendments available for public inspection.

Section 6D:

Where the Board proposes any

amendment to the draft plan, within the first 3 weeks of the period during which the proposed amendments are available for public inspection, any person (other than those who have already made representation or comment) may make further representations. Those excluded because they have already made representations or comments are nevertheless entitled to attend and be heard in a meeting of the Board called under section 6F to consider the further representations All further representations submitted shall be made available for public inspection.

Section 6E:

Any person may by notice to the Board withdraw his or her representations or comments at any time before they have been considered by the Board.

Section 6F:

The Board shall hold a meeting to consider any further representation as soon as reasonably practicable after the expiration of the 3-week period under section 6D.

On consideration of any further representation, the Board shall decide whether to amend the draft plan in question, either by the proposed amendments published, or by amendments as further varied in such manner as it considers appropriate.

Where further representation is made but not made in opposition to the proposed amendments, the Board shall, upon consideration of any such further representation, amend the draft plan in accordance with the published, proposed amendments.

Section 6G:

If there is no further representation made in respect of any proposed amendments, the Board shall amend the draft plan in accordance with the published, proposed amendments.

Section 12A:

Any person may apply to the Board for consideration of any proposal in relation to an original approved plan (i.e. an approved plan or a referred approved plan). However, if the original approved plan to which the application relates is a referred approved plan, and there is a relevant

draft plan in relation to the original approved plan, no proposal in the application relating to a matter covered by an amendment introduced to the original approved plan by the relevant draft plan will be considered.

Where an application is made, the Board may require the applicant to verify matters or particulars in the application by statutory declaration. The application will also be made available for public inspection. Any person may make comments on the application. The Board shall make all comments it receives available for public inspection. The Board shall also hold a meeting to consider the application (as well as the comments made by others). The applicant is entitled to attend and be heard at the meeting.

Section 24A:

In any proceedings under the Ordinance, any document incorporating an image of an aerial photo of land, or any copy of such document, purporting to be issued by the Lands Department and purporting to be signed or initialed by any public officer authorised by the Director of Lands shall on its production be admissible without further proof as prima facie evidence of the matters shown therein.

HONG KONG BRIEFING

Agreement on Landfill Gas Use

The Environmental Protection Department (“EPD”) signed a supplemental agreement with Far East Landfill Technologies Limited (“Far East”) on 16 March 2004 under which Far East will be responsible for the treatment and delivery of landfill gas generated from the North East New Territories Landfill (“NENTL”) in Ta Kwu Ling to the production plant of Hong Kong and China Gas Company Limited (“HKCG”) in Tai Po as an alternative heating fuel for production of town gas.

At present landfill gas is only used to generate electricity for on-site facilities and as a direct heating fuel in the landfill’s leachate treatment plant. The surplus raw landfill gas is burnt off, for safety and environmental reasons. The NENTL has been in use since 1995. The landfill gas generated has reached a level that is

economically viable for off-site utilization. The project will utilise the surplus landfill gas. HKCG will use it as partial replacement for the existing heating fuel, which will help to conserve fossil fuel and reduce emissions of greenhouse gases into the atmosphere.

The project is expected to begin in early 2006 and continue for an estimated period of 25 years. The project includes the construction and operation of a gas-treatment plant at the NENTL to treat raw landfill gas to specific standards before being transferred to the HKCG plant through a 19-kilometre-long pipeline. Far East will invest \$80 million in the gas treatment plant and HKCG will invest \$150 million in the gas pipeline.

[EPD\(\[http://www.epd.gov.hk/epd/english/news_events/press/press_040316b.html\]\(http://www.epd.gov.hk/epd/english/news_events/press/press_040316b.html\)\),
16 March 2004](http://www.epd.gov.hk/epd/english/news_events/press/press_040316b.html)

Shenzhen River proposal sparks new Mai Po fears

The Shenzhen official in charge of the Shenzhen River improvement programme attended a closed seminar at the University of Science and Technology on 24 March 2004 for discussions on the Shenzhen government's preliminary proposal to flush the polluted Shenzhen River with sea water by building a water tunnel through Wutongshan, north of the river, to divert sea water from Mirs Bay into the river near Lowu.

The participants expressed their concerns that implementation of the proposal could be detrimental to the Mai Po marshes which lie at the mouth of the river in Deep Bay. The proposal will make the river more salty and affect its flow, which in turn would fundamentally change the wetland habitats of the marshes. The mangroves and creatures living on the mudflats might be unable to adapt to salinity changes. The increased water flow will affect the stability of the mudflats.

Authorities in Shenzhen have hired experts from the Centre of Coastal and Atmospheric Research at the Hong Kong University of Science and Technology to study the proposal's feasibility. The World Wide Fund for

Nature Hong Kong, which is managing the Mai Po nature reserve, will act as sub-consultant to study the preliminary impact on the endangered black-faced spoonbill and mangroves.

The ecology in Deep Bay should be the critical factor for the project, as the officials said the volume of water drawn and discharged would depend on the ecological impact. If the volume is not sufficient to achieve the purpose of diluting the pollution in the river, the project will be dropped.

South China Morning Post, March 25, 2004

Overprotection of Harbour ?

The Hong Kong Government has announced its \$19.5 billion proposal to clean up Victoria Harbour, which will involve collecting barely treated sewage at the Stonecutters Island plant for treatment, building an extra biological-treatment facility and upgrading the existing one.

Rudolf Wu Shiu-sun, head of biology and chemistry at City University, warned that overprotecting and unnecessarily cleaning up Victoria Harbour would be a waste of taxpayers' money.

Biological treatment that removes excessive nutrients and organic matter from water is believed to be an effective measure to curb red tides, which are harmful to marine life. However, there is insufficient scientific evidence on the effectiveness of biological treatment of red tides. Professor Wu suggested that more water quality monitoring should be conducted, after the expansion of chemical treatment of sewage at Stonecutters Island is completed, to determine if further action is needed. He suggested that it will be more cost effective to spend the money allocated to the project in helping mainland cities, which pump massive amounts of raw sewage into rivers, solve their pollution problems.

"With the same investment, we can achieve a much better clean-up regionally than a marginal improvement locally," Professor Wu said.

EPD officials said that upgrading the biological treatment plant will only

bring marginal benefits to water quality in addition to chemical treatment. For instance, the dissolved oxygen level - a key factor in determining marine life survival- will increase by only 5 per cent by investing \$ 11 billion in the biological treatment facility.

However, Ho Kin-chung, a water quality expert from Open University and a member of the Advisory Council on the Environment, said changes were needed, and speeding up biological treatment would also help to reduce the impact of worsening water pollution from the Pearl River Delta.

Four Hong Kong universities are now conducting a joint effort to study how - after the water quality improves - Victoria Harbour will recover from the pollution problems which have plagued it for decades. Professor Wu said that it might take a decade for Victoria Harbour to be restored to its original condition.

South China Morning Post, June 28, 2004

HONG KONG DISNEYLAND UPDATE

Hong Kong's unseen environmental disaster

On July 3, 2001, a seawall at the Tseung Kwan O reclamation site collapsed, submerging 3.6 million tonnes of construction and demolition waste in an area once called Junk Bay. The waste was to be used in the Penny's Bay Stage One reclamation, as part of the multi-billion-dollar Disneyland project.

This was by no means an insignificant amount of waste. In fact, it was equal to the total annual volume of Hong Kong's construction and demolition waste, and had required 300,000 truck journeys to transport it to the site. However, the government has since been silent about this giant mishap, and the public has had little information concerning it.

Three years have now passed, but time has not washed away the shame; rather, it has unveiled the hidden consequences which the government must deal with. In November 1999,

construction of Hong Kong Disneyland began, with much fanfare. Since then, the environment has suffered numerous blows. Chiefly, the Civil Engineering Department granted an illegal reclamation contract without the approval of the Environmental Protection Department, leading to a \$270 million compensation claim by the contractor. Then the department bypassed the constitutional process to allow the dredging of marine sand on Po Toi Island, damaging the natural habitat of rare table-like coral. In addition, the dredging killed 20,000 fish and six million minnows in the nursery and spawning grounds, for which the government had to pay \$30 million in compensation to the fishing industry.

There was also the revelation of toxic pollution at Cheoy Lee Shipyard. The government was reluctant to admit the existence of dioxin contamination. Finally, earlier this year, the illegal excavation of rocks and boulders from Tung Chung stream came to light and sparked an investigation by the Independent Commission Against Corruption.

According to an estimate by Friends of the Earth (HK), these incidents add up to a bill of \$1 billion in environmental damage, which taxpayers will have to pay. Thus, we are left with fewer public funds and a worse environment.

Following the collapse at Tseung Kwan O, in order to ensure the inauguration of Disneyland next year the Civil Engineering Department abandoned its search for other sources of construction and demolition waste and resorted to digging marine sand without a full estimate of the cost and efficiency of the scheme. In the end, the East Lamma Channel, opposite Ap Lei Chau, was ruined. More than 3.7 million square meters of marine sand was removed in a week, equal to the amount of waste processed annually at Hong Kong landfills. Environmental debts caused by Disneyland will require endless redemption in the opinion of Friends of the Earth (HK).

South China Morning Post, 3 July 2004

ADVISORY COUNCIL ON THE ENVIRONMENT (ACE)

Landfilling activities at She Shan Tsuen, Tai Po

(ACE Paper 13/2004) (by Housing, Planning and Lands Bureau, Environment, Transport and Works Bureau, April 2004)

This paper examines the existing regulatory regime in dealing with the land filling activities on private land in the New Territories (“NT”), in particular She Shan Tsuen, Tai Po.

Landfilling activities and dumping of waste on private land

Lease control

Whether land filling activity is allowed on private land depends on the land lease conditions. Most private land in the NT is covered by Block Government Leases (“BGLs”) granted in the early 20th Century. The main restriction in such BGLs is that no buildings are permitted on agricultural lots without the prior consent of the Director of Lands. However, BGLs do not contain conditions prohibiting land filling on agricultural land. Therefore, lease enforcement action cannot be taken by the Lands Department to prevent land filling activities on lots covered by BGLs.

Town Planning Ordinance (“TPO”)

All land uses and development must conform to the relevant statutory plans. Developments that are not permitted under the plan or without planning approval, or were not in existence before the Development Permission Area (“DPA”) plan are unauthorized developments (“UDs”) under the TPO. They are subject to enforcement action by the Planning Authority. Land filling activities which have led to complaints from residents in the vicinity of the sites concerned often take place on Agriculture zoned land. However, land filling in the Agriculture zone does not breach the relevant statutory plan. Therefore, unless there is clear evidence that the land filling activity will lead to UD, no legal action can be taken under the TPO.

Buildings Ordinance (“BO”)

All buildings and development works have to comply with the relevant provisions of the BO. If land filling or other activities on agricultural land are undertaken for the purpose of building or related works, they will be classified as building works and subject to Building Authority (“BA”)’s approval. The BA will not grant approval if the works do not comply with safety standards stipulated under the BO. On the other hand, if these activities are not undertaken for the purpose of building or related works, they will not come under the control of the BO. Therefore, only when land filling activities affect the safety of adjacent buildings or land or are part of building works will the BA consider enforcement action under the BO.

Waste Disposal Ordinance (“WDO”)

The existing WDO provides for sanctions against illegal disposal of waste. It is an offence if any person deposits or causes or permits any waste to be deposited on private land without the consent of the owner or occupier. However, where such activities are undertaken by the owner or occupier or with their consent, no sanctions apply.

The Administration is aware that the introduction of the construction waste disposal charging scheme might aggravate the problem of illegal disposal of waste. The Administration has therefore strengthened legal provisions under the Waste Disposal (Amendment) Bill No. 2 (which aims at introducing the charging scheme) against such acts, to minimize adverse impact on the environment. With regard to private land, ACE proposes to empower the Director of Environmental Protection (“DEP”) to enter any places, other than domestic premises, without warrant, or with warrant issued by the magistrate to enter domestic premises and dwelling places to remove waste if DEP or a magistrate has reasonable grounds to believe: that an offence of illegal disposal of waste has been committed; that the deposited waste is likely to give rise to an imminent risk of adverse environmental impact; and that immediate remedial actions are required. DEP would then be entitled to apply to court to recover from the offender the cost of removing waste.

Public Health and Municipal Services Ordinance

If land filling or dumping of waste on a particular piece of land gives rise to a nuisance, action may be taken against the land owner under this Ordinance. The Food and Environmental Hygiene Department may issue an abatement notice or notice of removal of litter or waste to the responsible person, requiring that person to abate the nuisance within a specified period of time. Failure to comply with the relevant notice is an offence.

Land Drainage Ordinance (“LDO”)

The LDO empowers the Drainage Authority (“DA”) to carry out drainage works and other related matters within the specific areas (the Drainage Authority Area) as defined in the LDO. If any private land owners without the DA’s consent carry out filling (or other obstruction) in any watercourse (in the specified areas) impeding water flow, action can be taken against such land owners. If, in the opinion of the DA, obstructions block any main watercourse or impede the free flow of water in a Drainage Authority Area, the DA may require the owner of the land on which the obstructions are situated, or require any person causing the obstruction, to remove the obstruction.

Waterworks Ordinance (“WO”)

The WO empowers the Water Authority (i.e. the Director of Water Supplies) to take actions for the prevention of pollution in water catchment areas. If there is objective evidence that land filling activity has caused or is likely to cause contamination of water, prosecution may be initiated. On the other hand, if the filling is placed properly and is unlikely to cause any contamination, prosecution action cannot be taken under the WO.

[Land filling activity on private agricultural land at She Shan Tsuen, Tai Po](#)

The site in question is at She Shan Tsuen, Tai Po, and is zoned “Agriculture”. Land filling is occurring on the site which could adversely affect the rural environment of the area, cause environmental nuisance and increase the risk of flooding. The government agencies

have been requested to take legal action against perpetrator of the land filling activity so as to prevent the situation from deteriorating and to deter similar cases in the future. Some have suggested a “test case” prosecution.

Prosecution Considerations

Officials have considered taking enforcement action under relevant Ordinances. However, at this stage a prosecution action is unlikely to succeed because there is insufficient evidence, in the context of the relevant ordinances, to prove an offence.

Way Forward

As demonstrated in the She Shan Tsuen case, there could be situations where, despite the existence of relevant law, no immediate enforcement action can be taken due to limitations in the regulatory regime or lack of sufficient evidence. Therefore, the Administration will review its policies and legislation in the light of this case to see whether it is necessary, and if so, how, to strengthen the Government’s control over certain activities on private land, with a view to improving protection of the environment.

TOWN PLANNING

Hopewell Holdings continues its battle with the Town Planning Board

Hopewell Holdings has resumed the review proceedings against the decision made by the Town Planning Board rejecting its plan for a HK\$4 billion mega-hotel in Wan Chai. Mr. Gordon Wu, the chairman of Hopewell Holdings, insisted that he would not give up the plan which he had spent over 25 years preparing. The toll road operator and property developer said it was prepared to defend the project against criticism on grounds of traffic, sustainability, visual impact and lack of open space which were the main reasons the Board rejected Hopewell’s application in February and early April this year.

In fact, Hopewell submitted plans to the Board for the hotel 12 times over two decades. In a worst-case scenario, Hopewell was prepared to go back to the original plan to build a 93-storey tower.

The planned construction, named the Mega Tower Hotel, was initiated in the early 1990s. In 1994, the Board rejected the plan to build a 93-storey tower. The height was later reduced and the design altered to include residential and commercial space after repeated objections by Wan Chai residents and to satisfy the requirements of the Board.

The current plan consists of a twin-tower 61-storey four-star hotel, in an L-shape floor plan sandwiched between Queen’s Road East at ground level and Kennedy Road, 16 storeys up. The proposed hotel would have 2,280 rooms, with a gross floor area of 1.86 million sq ft..

The reason for rejection by the Board was that the “fan-shaped” structure would spoil the view of many tenants and operations of the hotel worsen traffic congestion on Kennedy Road.

However, Hopewell’s estimates were that the project would only bring about 2,200 additional vehicles per day to Kennedy Road and Queen’s Road East, with total traffic being approximately 35,010 vehicles a day. This would be less than other major roads in Wan Chai. Actually, traffic on the two roads has been declining over the past decade, Hopewell maintained.

The company also explained that the height of the project would be lower than its 68 storey-high Hopewell Centre and would not affect views of the tenants nearby. As well, Hopewell would increase the amount of open space to 9,964 sq. m under the revised plan, compared with 5,880 sq. m in the original plan.

Although it appreciated Hopewell’s efforts to improve the old district of Wan Chai, the Board, after the review application, remained concerned about the project’s “fan-shape” design and the impact the development would have on traffic flow in the area. The Board expressed great concern that the design would spoil views and create a “wall effect” for people viewing it from Bowen Road. The Board therefore deferred its decision until Hopewell submitted further information for their consideration.

The Board revealed their dissatisfaction that the company failed to provide sufficient data to

demonstrate that its project would not result in unacceptable traffic congestion on the surrounding road network. It appears that the Board still requires a better scheme in respect of traffic and other environmental issues.

[*The Standard*, 21 July 2004 and 24 July 2004]

Urban Renewal Authority paid HK\$600million for redevelopment

The government agency Urban Renewal Authority (URA) paid HK\$600 million in land premiums to the government for the redevelopment of a residential project in Tsuen Wan, which cost about HK\$2 billion.

As the land was granted by the government, the URA has had to pay land premiums if it invites private developers to join in a joint development, but it can take a share of the profits from apartment sales. The present project is a 77,824-square-foot site at Yeung Uk Road which was assigned to Sino Land through public tender in April 2004. Sino Land outbid 13 developers.

The Tsuen Wan project will comprise a total gross floor area of about 414,000 sq. ft. and incorporate 552 flats when completed in 2007. Pursuant to the estimates of the developers and surveyors, total investment will be nearly HK\$2 billion.

Two years ago, Sino won the nearby HK\$4 billion Tsuen Wan town centre renewal project. That project will comprise seven residential towers with a total of 1,904 homes and is scheduled to be completed in 2006.

Meanwhile, the URA has invited developers to submit expressions of interest for joint development of the Pon On Road-Shun Ning Road residential project in Sham Shui Po. The site in Sham Shui Po covers an area of about 15,000 sq. ft. and the redevelopment is expected to total a gross floor area of about 135,000 sq. ft. for both residential and commercial purposes.

Apart from Sino Land, other developers - including Wharf (Holdings), Sun Hung Kai Properties, Cheung Kong (Holdings), Henderson Land Development, Chinese Estates Holdings and New World Development - have expressed

interest in the project.

A tender review panel under the URA Board will later short-list the qualified parties and invite them to submit a formal tender.

[*The Standard*, 22 July 2004]

REGIONAL & INTERNATIONAL

China

Dam work continues despite directive

Workers are labouring around the clock on a controversial hydro-electric dam project in Yunnan province, despite Premier Wen Jiabao's order that construction must stop to allow an assessment of the dam's potential environmental impact.

At Yabiluo, ten surveyors from a Beijing-based company have continued taking hydrological and geological measurements, while 60km downstream, near the town of Liuku, labourers are paving a road on the eastern side of the river bank.

The dam, which involves construction works at 13 separate sites, will harness one of the mainland's last naturally flowing rivers to produce more than 20 million kilowatts of electricity a year. The provincial and local governments support the project as it will help reduce poverty, but opponents say the dam will destroy thousands of rare and endangered plants and animals and force the relocation of thousands of people, most of whom are members of western Yunnan's 22 ethnic minorities.

In an apparent victory for the project's opponents, Premier Wen in February 2004 ordered work to be suspended until an impact assessment could be carried out. One of the surveyors at the Yabiluo site said they began work in March 2004 and expected to remain there until June or July.

Opponents of the dam said the preparations were an attempt by the local governments to create unstoppable momentum for the project. Premier Wen's order prohibits "actual project work", but allows land surveying and hydrological analysis. Yu Xiaogang, director of the Kunming-based environmental group Green Watershed and leader of the campaign against the dam project, said

the building of a road to the Liuku site might violate the order to stop work. However, members of the Nujiang Communist Party Committee said the work at both sites was within the parameters of the order.

Duan Bin, director of the county propaganda section, said surveying at the Yabiluo site was part of the required environmental impact assessment report, while the road to Liuku was part of a larger transport corridor. Asked what would happen if the central government rejected the project, Mr Duan said: "We don't believe in hypothetical situations."

[*SCMP*, 19 May 2004]

Backlash as developers encroach on historic waterway

When the Shanghai Government announced 12 years ago that it would clean up the black and odorous Suzhou Creek, it promised to turn it into the "Seine of Shanghai". Ten years and billions of yuan later, it has transformed the creek into a river in which fish can live and you can see a reflection of the sky, while not having to hold your nose.

The creek is an integral part of the city's history. Rising in the Taihu Lake in Jiangsu province, it flows towards the east for 125km, of which 54km passes through the administrative district of Shanghai and 24km through the most urbanised part of the city, ending up in the Huangpu River. Since the 1920s it has been the most polluted waterway in Shanghai, and has been used as a site for disposal of domestic and industrial waste.

From 1997, assisted by the Asian Development Bank, the government has spent nearly seven billion yuan on the clean-up, building 19 pumping stations, renovating 65 others and closing or moving 36 poultry markets. It moved 19 piers and demolished 144 and moved tens of thousands of people living in desperate conditions.

The work to clean up the creek has been successful. However, the creek, which divides Shanghai into north and south, has been turned into a concrete forest, with clumps of 20- and 30-storey apartment blocks built next to the river and dominating the sidewalk. The public, and especially those who

lived on the river, are angry about what the government has done, blaming it for passing up an historic opportunity to restore the famous waterway. They had dreamt of walking the length of the creek, along a broad pavement planted with lawns and trees, will all apartment blocks built a reasonable distance away. This is now impossible.

Public anger reached the Great Hall of the People in Beijing in March 2004, when Shanghai delegates raised the issue at the annual meeting of the National People's Congress and forced Shanghai mayor Han Zheng to require developers to return riversides to the public.

Belatedly, the city government passed planning regulations for the development of the creek in 2003, including guidelines for smaller plot ratios and a stipulation that a building must be as far from the river as it is tall, and that the area next to the river bank must be open to the public. However, the regulations came too late to stop the dozens of projects already built. For developers, the restoration of the creek was a heaven-sent opportunity. The government needed the millions of yuan collected from the developers to pay for the clean-up of the river and to remove thousands of old houses, factories, warehouses and rubbish dumps along its banks.

Wang Haisong, deputy director of the architecture department of the Fine Arts College at Shanghai University, said that it was the district government and not the city that sold the land to raise money. "The projects approved before the regulations came into force are legal, and there is nothing we can do. Since then, the city government has paid more attention to the issue. But I feel that it is too late. All we can do now is try to reduce the number of bad projects," he said.

SCMP, 21 April 2004

Canada

Seal cull ignores cameras, protests

Canadian hunters have started one of the biggest seal culls in decades on the ice floes of Newfoundland and Labrador, ignoring the protests of animal rights groups. Authorities have increased the number of harp seals that can be culled to nearly one million

during the 2003-2005 period, and the take this year might go as high as 350,000. Animal rights groups say the cull, which began yesterday, is the largest since the 1960s. Activists from the International Fund for Animal Welfare are out on the ice, filming the slaughter.

Canadian authorities, however, contend that the seal population is a growing threat to cod stocks in the Atlantic, and that the culling is humane. Atlantic harp seal stocks have rebounded from 1.8 million in 1970 to 5.2million, according to the Canadian Department of Fisheries and Oceans. The Government says that seals are a valuable natural resource, providing valuable income to about 12,000 Canadian sealers and their families.

Greenpeace, which led campaigns against seal hunting in the 1970s and 1980s, no longer opposes the culling of adult seals because the species is not threatened. But IFAW argues the cull is inhumane. In past years, IFAW activists have reported seeing hunters skin live seals and drag live seals across the ice with hooks. Last week The New York Times splashed a seal-hunting picture on its front page, under the headline "Horrors".

The Toronto Globe and Mail counter-attacked in an editorial. "Seals are cute ... for Western city dwellers, whose earliest understanding of nature comes via Walt Disney, this alone is enough to grant them endangered-species status. "Horrors", says the Times. To which we say, "codswallop"

The Australian, 13 April 2004

This Quarterly Report does not constitute legal advice given on any particular matter. Whilst all effort has been made to ensure completeness and accuracy at the time of publication, no responsibility is accepted for errors and omissions. Further information and enquiries in respect of this quarterly report should be directed to Fred Kan & Co. or any of our following associate firms:

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Convictions under environmental legislation: April - June 2004

The EPD's summary of conviction recorded and fines imposed during the period April to June 2004 is as follows:

April 2004

Thirty-eight convictions were recorded last month (April) for breaches of anti-pollution legislation enforced by the Environmental Protection Department.

Twenty of the convictions were under the Air Pollution Control Ordinance, 14 under the Noise Control Ordinance, three under the Waste Disposal Ordinance and one under the Water Pollution Control Ordinance.

The heaviest fine in April was \$50,000, assessed against a company that failed to take measures to control air pollutant emission.

May 2004

Sixty convictions were recorded last month (May) for breaches of anti-pollution legislation enforced by the Environmental Protection Department.

Thirty-four of the convictions were under the Air Pollution Control Ordinance, 12 under the Noise Control Ordinance, 12 under the Waste Disposal Ordinance and two under the Water Pollution Control Ordinance.

The heaviest fine in May was \$40,000, assessed against a company that used powered mechanical equipment without a valid construction noise permit.

June 2004

Fifty-nine convictions were recorded last month (June) for breaches of anti-pollution legislation enforced by the Environmental Protection Department.

Twenty-nine of the convictions were under the Air Pollution Control Ordinance, 15 under the Waste Disposal Ordinance, 13 under the Noise Control Ordinance and two under the Water Pollution Control Ordinance.

The heaviest fine in June was \$40,000, assessed against a company that used powered mechanical equipment without a valid construction noise permit.

July 2004

38 pollution convictions in July 2004

Thirty-eight convictions were recorded last month (July) for breaches of anti-pollution legislation enforced by the Environmental Protection Department.

Nineteen of the convictions were under the Air Pollution Control Ordinance, 10 under the Waste Disposal Ordinance, five under the Water Pollution Control Ordinance and four under the Noise Control Ordinance. The heaviest fine in July was \$60,000, assessed against a company that carried out prescribed construction works without a valid construction noise permit.

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