

I. Chronology of the Defective Piling Dispute between HA and Zen Pacific

c.2000 Housing Authority ("HA") discovered defective piling works for 2 building blocks at Yuen Chau Kok (圓州角), demolished them and took various actions against Zen Pacific ("Zen"), the piling contractor, including

- (1) removing Zen permanently from HA's Lists of Large Diameter Bored Piling ("LDBP") Contractors and Demolition Contractors;
- (2) prohibition Ngo Kee (a sister company of Zen with broadly the same management) from tendering for all HA projects for a period of 24 months; and
- (3) seeking, through arbitration, to establish Zen's liability for breaches of contract and hence compensation from it for HA's losses arising therefrom

June 2000 Zen made 2 alternative offers to HA

- (1) Zen to pay HK\$100m by instalments, with Wai Kee Group (a listed company) providing a guarantee for payments; OR
- (2) Ngo Kee (a sister company of Zen) to build 2 replacement blocks at a price of HK\$465m and Zen to compensate HA for abortive piling costs (HK\$28m), building costs paid to Paul Y (HK\$119m) and Paul Y's claims (HK\$30m-HK\$66m).

both subject to the following conditions:-

- (i) Zen will voluntarily de-list from HA's list of LDBP contractors, and will refrain from bidding for any other HA contracts for 1 year;
- (ii) HA will use its best endeavours to persuade Govt to maintain business relationship with Zen for all types of contract except LDBP;
- (iii) HA will use its best endeavours to encourage KCRC, MTRC and Airport Authority to trade normally with Zen;
- (iv) HA will not make any further sanction against any company of the Wai Kee Group, or any company having directors in common with the Group arising from the defective piling case; and
- (v) HA will not sanction any officer of Zen arising from the defective piling case except in circumstances of suspected criminal conduct.

3 Jul 2000 HA's Building Committee ("BC") rejected the 2 offers, thinking that the second offer was too complex and it would not be appropriate to appoint Ngo Kee to rebuild the 2 blocks without going through proper tender procedure;

BC's counter-proposal:-

- (1) HA to receive a sum of HK\$200m (an upfront payment of HK\$100m with the balance paid by 5 equal annual instalments); and
- (2) Zen to be de-listed from HA's lists of LDBP and demolition contractors.

Zen's revised offer:-

HK\$140m (an upfront payment of HK\$40m with the balance paid by 5 equal annual instalments) but resisted the extension of de-listing to demolition works.

BC unanimously rejected Zen's revised offer because it was facing very strong public discontent about the piling scandals and was keen to make public the whole matter to achieve transparency and to establish liability of the contractor.

Jan 2001	ICAC charged a number of persons involved in the case; Legislative Council established a Select Committee to examine various incidents related to construction problems in public housing;
mid 2001	Arbitration started; the claim was HK\$605m, comprising the following items:- <ol style="list-style-type: none"> (1) HK\$212m - costs incurred by HA (wasted expenditure, demolition costs, investigation costs, abortive costs); (2) HK\$65m - compensation claimed by Paul Y-ITC General Contractors Limited ("Paul Y") (superstructure contractor of the 2 demolished blocks with piling problems; and (3) HK\$328m - loss of value of asset.
15 Nov 2002	Zen proposed 2 alternative offers for settlement:- <ol style="list-style-type: none"> (1) cash payment of HK\$50m + legal costs of HK\$10m; or (2) cash payment equivalent to 2/3 of its NAV (HK\$80m as claimed by Zen)
21 Nov 2002	BC rejected the offers for the following reasons: <ol style="list-style-type: none"> (1) offers were much lower than the previous offer of HK\$140m; and (2) HA also considers itself having a strong case.
Unknown	Arbitrator rules in HA's favour and awarded HA:- <ol style="list-style-type: none"> (1) HK\$199m for costs incurred by HA; (2) full indemnity by Zen for any HA payment to Paul Y; (3) interests and legal costs

Unknown Taking into account that the NAV of Zen is well below HK\$80m, HA agreed to settle with Zen on the following terms: -
Zen pays HA HK\$80m by instalments with Wai Kee Group's guarantee:

- (1) HK\$10m by 31/12/2003
- (2) HK\$20m by 15/9/2004
- (3) Balance by the end of 2004

NOTE: legal costs incurred by HA from 2000-2003 = HK\$38.6m. This comprises: -

- (1) HK\$20.8m for solicitors' fees;
- (2) HK\$8.0m for counsels' fees;
- (3) HK\$6.8m for experts' fees;
- (4) HK\$2.4m for arbitrator's fees; and
- (5) HK\$0.6m for other arbitration expenses.

II. Tendering Process re Short Piling Cases*

- (a) Tender exercise - HA invited firms to advise on 7 defective piling projects around January 2000 - a list of 10 firms was compiled and 8 of them were invited to submit proposals. The other two were not invited as they are known to be representing contractors concerned.
- (b) 6 submitted proposals while 2 declined because they were also representing contractors. 4 firms were ultimately selected. Simmons and Simmons (third in overall score) assigned to deal with Zen Pacific case. The two firms with higher scores were each assigned to deal with more than one project.
- (c) In the event, BC, having considered the legal advice given, decided to take actions against the piling contractors concerned and these four solicitor firms were appointed to continue with their actions in relation to those piling contractors in the projects they had already advised on.
- (d) Philip Nunn ("**Nunn**") was nominated by Simmons and Simmons to be in charged of the case and the legal team on the basis of his expertise.
- (e) Nunn declared his interest in accordance with the relevant HA's Standing Orders every time before BC discussed matters related to the Zen Pacific case, and attended BC meetings in his capacity as HA's legal adviser for the case.
- (f) Whenever the case was discussed, he vacated from the Chair and another member was selected to stand in as acting Chairman. BC was fully aware that he was serving in his capacity as HA's legal adviser during the discussion of the case.

* The above information is gathered from the correspondence between Michael Suen and Audrey Eu dated 12th November 2003.