

**HSIN CHONG CONSTRUCTION GROUP LTD:
MR GEOFFREY YEH: CHINA CALLING !**

The long-running battle between the 2 publicly listed giants, China Overseas Land and Investment Ltd and Hsin Chong Construction Group Ltd, took a new turn, recently, when China Overseas sued a Hsin Chong's subsidiary for about \$HK18 million.

China Overseas Foundation Engineering Ltd, a wholly owned subsidiary of China Overseas Land and Investment Ltd (Code: 688, Main Board, The Stock Exchange of Hongkong Ltd) is the Plaintiff in High Court Action Number 4195, the Defendant, being Flannel Ltd, formerly known as Hsin Chong (Foundations) Ltd, which is 92.79 percent owned by Hsin Chong Construction Group Ltd (Code: 404, Main Board, The Stock Exchange of Hongkong Ltd).

The dispute between these 2 giants of the construction world of the Hongkong Special Administrative Region (HKSAR) of the People's Republic of China (PRC) goes back more than 2 years, following Flannel Ltd, being awarded a \$HK2.80-billion contract from the Architectural Services Department of the Government of the HKSAR.

The contract was for the construction of the Disciplinary Staff Quarters at Lee On Road, Kwuntong, Kowloon, according to the 2002 Annual Report of Hsin Chong Construction Group Ltd.

China Overseas, it appears, was a sub-contractor of Flannel Ltd, it is stated at Paragraph 4 of the Statement of Claim, attached to the Writ of Summons in respect of High Court Action Number 4195.

Paragraph 5 of the Statement of Claim, then, continues:

'5. Disputes and differences have arisen between the Plaintiff and the Defendant regarding the Sub-contract Works. The Plaintiff (China Overseas Foundation) commenced legal proceedings in the High Court of Hong Kong Special Administrative Region in Construction and Arbitration Proceedings No. 45 of 2000. The Defendant (Flannel Ltd) also commenced legal proceedings in the High Court of Hong Kong Special Administrative Region in High Court Action No. A4525 of 2000 (subsequently transferred to become Construction and Arbitration Proceedings No. 54 of 2000).

'6. On 24 January 2002, the Plaintiff and the Defendant entered into a written settlement agreement (the "Settlement Agreement").

'7. The Settlement Agreement provided for, inter alia, the following terms (FLL refers to the Defendant and COFEL refers to the Plaintiff):

'7.1 Clause 1.1: "FLL agrees to pay, and COFEL agrees to accept, Hong Kong Dollars Twenty One Million Only (HK\$21,000,000) ("the Settlement Sum") in full and final settlement of any and all of the parties' respective rights in connection with the Proceedings or arising out of the Sub-contract or at law, including interest and costs save in respect of latent defects arising out of the Sub-contract Works."

'7.2 Clause 1.2: "Subject to Clause 1.4 below, the Settlement Sum shall be paid by FLL to COFEL by way of instalments in accordance with the following timetable without any set off, deduction and/or abatement whatsoever:-

| <i>Instalment</i> | <i>Due Date</i> | <i>Amount of Instalment</i> |
|----------------------------------|--|------------------------------------|
| <i>1st Instalment</i> | <i>one month of the date hereof</i> | <i>HK\$3,000,000.00</i> |
| <i>2nd Instalment</i> | <i>nine months of the date hereof</i> | <i>HK\$9,000,000.00</i> |
| <i>3rd Instalment</i> | <i>fifteen months of the date hereof</i> | <i>HK\$9,000,000.00</i> |

'7.3 Clause 1.3: "Time is to be of the essence of this Agreement."

'7.4 Clause 1.4: "In the event that FLL fails to pay to COFEL any settlement in full by its due date as per Clause 1.2 above, the whole of the Settlement Sum LESS any previous payment(s) actually received by COFEL shall become automatically due and payable immediately by FLL to COFEL without any set off, deduction and/or abatement whatsoever."

'8. Pursuant to Clause 1.2 of the Settlement Agreement, the Settlement Sum should be paid as follows:

| <i>Instalment</i> | <i>Due Date</i> | <i>Amount of Instalment</i> |
|----------------------------------|-------------------------|------------------------------------|
| <i>1st Instalment</i> | <i>24 February 2002</i> | <i>HK\$3,000,000.00</i> |
| <i>2nd Instalment</i> | <i>24 October 2002</i> | <i>HK\$9,000,000.00</i> |
| <i>3rd Instalment</i> | <i>24 April 2003</i> | <i>HK\$9,000,000.00</i> |

'9. The Defendant paid the 1st instalment to the Plaintiff on 24 February 2002 in accordance with Clause 1.2.

'10. The Defendant failed to pay the 2nd instalment to the Plaintiff on 24 October 2002 pursuant to Clause 1.2.

'11. Pursuant to Clause 1.4, the whole of the Settlement Sum (ie HK\$21,000,000.00) less payment received by the Plaintiff (ie HK\$3,000,000.00) became automatically due and payable immediately by the Defendant to the Plaintiff without any set off, deduction and/or abatement whatsoever. Thus the Defendant is liable to pay to the Plaintiff the sum of HK\$18,000,000.00.

'12. Despite repeated request and demand, the Defendant failed to pay the sum owing to the Plaintiff or any part thereof.'

Hsin Chong incurred a ... [CLICK TO ORDER FULL ARTICLE](#)

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