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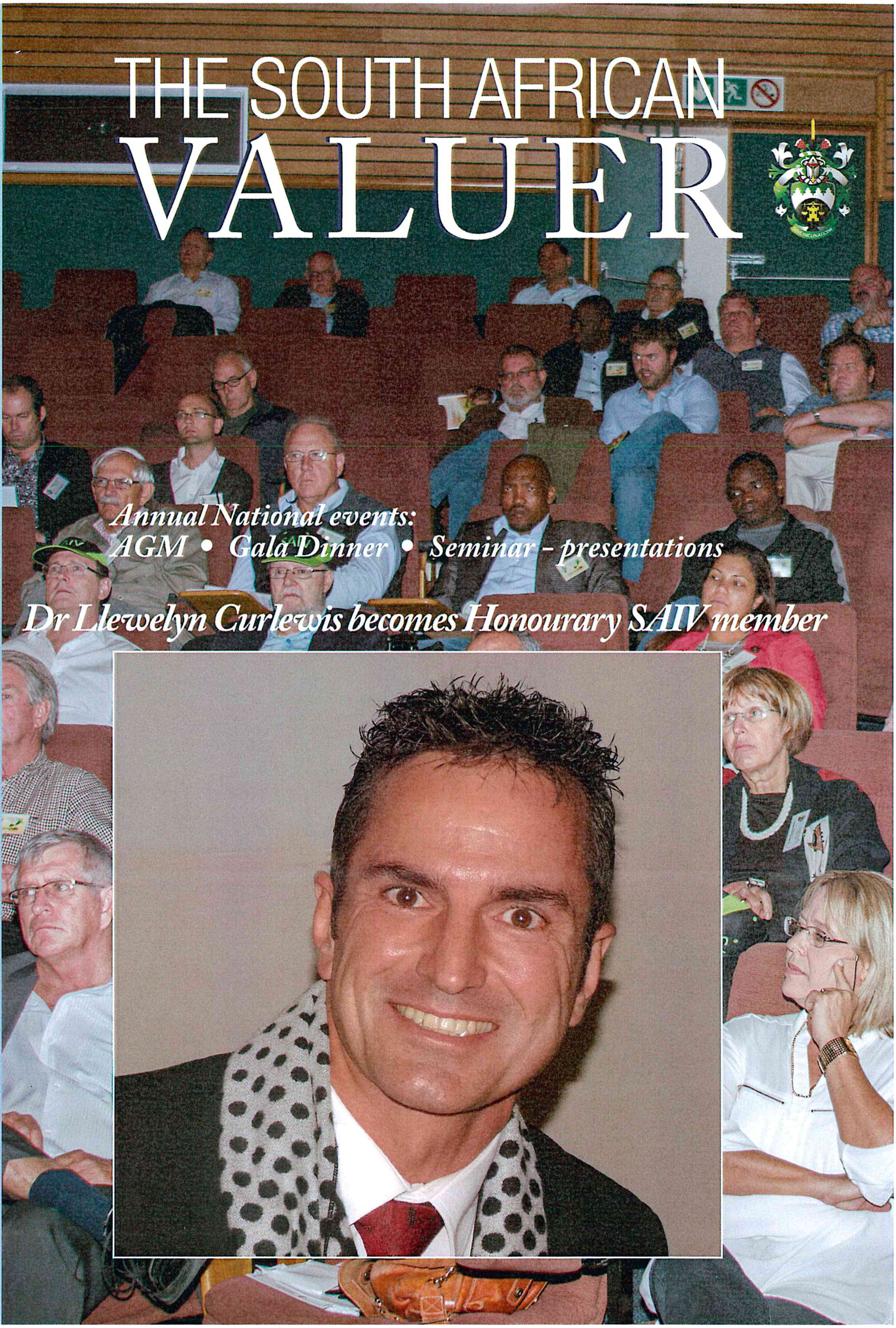

Annual National events:
AGM • Gala Dinner • Seminar - presentations

Dr Llewelyn Curlewis becomes Honourary SAIV member

INTERNATIONAL STANDARDS 2013 AND MPRA SECTION 45(1) IMPLICATIONS

MPRA - Section 46(1)
The MPRA definition of market value is as follows, making it subject to the other applicable provisions of the Act: *"Subject to any other applicable provisions of this Act*, the market value of a property is the amount that the property would have realised if sold on the date of valuation in the open market by a willing seller to a willing buyer."

MPRA - Section 45 (1)
The primary applicable provision is Section 45(1) of the Act, in terms of which *"Property must be valued in accordance with generally recognised valuation practices, methods and standards,* and the provisions of this Act".

In terms thereof, the following breakdown is considered to be appropriate:
2.1 generally recognised valuation practices;
2.2 generally recognised valuation methods; and
3.3 generally recognised valuation standards.

The Section 45(1) qualification that the provisions of the Act are also to be taken into account includes the specific, rather than general, Section 45(2)(a) provision that physical inspection is optional and the Section 45(2)(b) provision that computer-assisted mass appraisal systems may be used. In the latter case, however, I take the view that, once the objection/appeal process is under way, the application of generally accepted valuation standards should take precedence in MPRA market value determination.

Generally recognised valuation standards
Generally recognised valuation practices might be regarded as the application of South African case law precedents, and could in the future well include the MPRA Standards and Guidance, the preparation of which is now being embarked upon by a South African Institute of Valuers team.

Valuation in accordance with generally accepted valuation standards, however, has a much wider connotation, both in the South African and the wider international context. The purpose of this article is to set out for the benefit of the South African valuation profession what I consider should be the core of generally accepted valuation standards, as envisaged by Section 45(1) of the Act, namely the amplified International Valuation Standards Council definition of market value.

In doing so, I need to set out the background to the development of valuation standards in the South African context, and the progress over the years towards the adoption of International Standards as South African Standards, with particular reference to the definition and approach to the establishment of market value as the core of such standards.

1982 - *The Valuer* by E Louis Ellenberger
Some time after my 1978 appointment to the National Executive of the South African Institute of Valuers, E Louis Ellenberger was asked by the Institute to write a book on valuation. He asked the Institute in turn to set up a responsible Institute Committee, of which I was a member, to assist him by "offering constructive comment and suggesting alterations with the object of obtaining consensus and general agreement on my work by the Institute". The resultant book, The Valuer, was published in 1982, with Louis donating royalties to the SAIV, and in 1992 was incorporated into the Valuers Manual, produced by the SAIV.

In the core Chapter 6, headed Market Value, paragraph 7 set out what Louis referred to as "the ordinary voluntary sales standard", the following extract sets out the definition of such standard (with due acknowledgement to the SAIV):

> 7. <u>The ordinary voluntary sales standard</u>
> The various facets of the market value concept which have been considered in this chapter, taken together with those dealt with in preceding chapters, can now be summarised so that valuer can recognise and follow a standard of principles to be adhered to in the fulfilment of his functions and in the process of estimating market value.
>
> For want of a name that foundation may be referred to as the ordinary voluntary sales standard.
>
> Ordinarily property sales are mainly concluded by ordinary persons in an ordinary way, in ordinary circumstances and on ordinary terms and conditions. The parties bargain and make or reject offers as each strives to get the best deal he can.

As one transaction after another is concluded in this continuing process a pattern develops and a trend emerges which is closely watched by buyers and sellers alike who, being human, are prone to make comparisons.

From comparisons drawn of properties being sold it becomes possible to find typical examples conforming to established standards or norms which, when judiciously applied, furnish buyers and sellers alike with guide-lines according to which the values of properties can be gauged in the market.

In this manner a yardstick or measure for valuing immovable property comes into being and a foundation is laid upon which the thinking behaviour and actions of willing buyer and a willing seller in concluding a bona fide 'ordinary voluntary sale between parties who have a free choice whether or not they will consider the bargain at all' [*Union Government v Jackson* 1956 2 SA 398 (A) 425B].

The ordinary voluntary sales standard consequently set a precedent to be followed in estimating market value, provided the rules designed to uphold the standard are observed.

They are:
(i) neither party can be considered to be acting under compulsion [*Sri Raja Vyricherla Narayana Gajapatiraju Bahadur Garu v Revenue Divisional Professional Officer Vizagapatam* 1939 All ER 317 (PC) 321];
(ii) both parties must be regarded as acting voluntarily and a sale resulting should be contracted on the usual terms and conditions [*Pietermaritzburg Corp v SA Breweries Ltd* 1911 AD 50] in friendly negotiation [*Glass v Inland Revenue* 1915 SC 449 465] in the open market;
(iii) the negotiations must be on equal terms, both parties must realise the existing advantages and disadvantages and potentiality of the land [*Minister of Water Affairs v Mostert* 1966 4 SA 690- (A) 772], the facts relating to it, the restrictions on it and the possibility of their removal, the rights in respect of it, whether advantageous or injurious;
(iv) both parties must be assumed to be reasonably intelligent and well-informed people – not subject to any delusions or misapprehensions about the property and they must be taken to have engaged in a *bona fide* transaction [*Jacobs v Minister of Agriculture* 1972 4 SA 608 (W) 615B];
(v) the parties must be considered to be willing, but must also be able to conclude a sale, in addition to which the buyer must be considered lawfully competent and financially able to do so;
(vi) the motivation of the parties respectively to buy and sell must be objective, and
(vii) the circumstances must be considered to be normal.

The 'open market value' concept therefore conforms to the ordinary voluntary sales standard referred to.

While the above relate to the property and to a willing buyer and a willing seller, there are also standards to which a valuer must conform. They are:
(a) he should avoid 'demonstrable error or inherent improbabilities' [*Estate Marks v Pretoria City Council* 1969 3 SA 227 (A) 253B]
(b) his judgement skilfully exerted should be 'real and not merely fanciful or illusionary' [*Union Government v Gass* 1959 4 SA 401 (A) 401H]. In other words he should realistically align a logical deduction from the available facts and circumstances with the behaviour pattern of possible willing buyers and sellers in open competition at that particular time;
(c) he should bear in mind 'that it is not for him to give effect to any particular theory of valuation' [*Pietermaritzburg Corp v SA Breweries Ltd* 1911 AD 501 524], but to observe the maxim that 'market value is...but a question of fact, to be decided in the light of the circumstances of each particular case' [*Todd v Administrator Transvaal* 1972 2 SA 874 (A) 884G];
(d) his valuation must be based on a real foundation [*Colyvas v Valuation Court Pretoria* 1960 4 SA 34 (T) 40H] and he should observe that 'the state of the market taken into account is actual' [Davies 116 – 117],

while his valuation is an opinion, and

(e) in drawing his conclusion in this regard he must observe the fact that what is to be valued is land and not the owner's interests [*Steelpark Estate co Ltd v Vereeniging Town Council* 1963 2 SA 367 (T) 377F]. He cannot be influenced by the owner's position.

At that stage the Institute was the only valuers' institution in South Africa, and thus these valuation standards, and in particular the chapter on market value, including the above, should have been regarded as generally accepted valuation standards at such time in the country.

My personal international valuation standards involvement background

Having had the benefit of BSc degree in Estate Management from London University in 1961, four and a half years of office, retail and residential development in London and South East England, coupled with RICS membership, some years after my arrival in South Africa, John Hermann, that doyen of the SAIV, asked me to join the Southern Branch, and then the National Executive in 1978, in view of my professional education and experience.

South African International Valuation Standards Committee membership

With my interest in international valuation standards, and in the light of the then National Diploma in Property Valuation entrance into the profession, the National Executive allowed me to apply on behalf of the Institute for membership of the IVSC in 1985. This was declined for the ensuing seven years, effectively by the United Nations, because of the then international standing of South Africa.

Following the release of Nelson Mandela, the invitation for the SAIV to join the IVSC as a Valuation Professional Organisation was finally extended in 1993, and I attended my first meeting as the SAIV representative in Melbourne, Australia that year, serving as an Elected Member of the IVSC Management Board for the next ten-year period.

In 2003 the SAIV adopted the IVSC definition of market value, and in 2005 adopted IVS 2005 in toto as its own SAIV Standards, which were then reproduced in full in the SAIV Members' Handbook.

In 2009, at SACPVP request, I approached the IVSC on its behalf to seek Institutional Membership of the IVSC, which was duly granted, and I understand from the IVSC that a SACPVP representative has since been regularly present at IVSC Annual General Meetings.

In 2011 the SAIV secured a licence from the IVSC to republish IVS 2011 as "South African Institute of Valuers National Standards", but the SAIV intention to incorporate such Standards on its website was not in the event achieved, because of its website problems, as a result of which the IVSC licence to do so fell away in July 2012.

Some time prior thereto, the SAIV had terminated the update and issue of the Members Handbook containing the 2005 SAIV Standards to new SAIV members. As a result, new SAIV members have not been aware of the SAIV adopted Valuation Standards, unless they have taken the trouble to approach the IVSC for their own individual copy.

In 2014 the SAIV was one of 19 international valuation profession bodies who signed the Memorandum of Understanding with the IVSC (*The South African Valuer*, February 2015 – page 38).

In terms thereof:

The membership conditions of the IVSC state that Valuation Professional Organisation members (such as the SAIV) shall demonstrate:-

- That the organisation requires or actively encourages its members to adopt the IVSs in so far as is consistent with the law in the State or States in which they operate;
- That it has a policy of promoting the adoption and use of the IVSs within the markets in which its members operate.

Since the issue of IVS 2011, the IVSC has issued IVS 2013, and IVS 2015 is due to be published later this year.

Earlier this year, with the consent of the SAIV, I approached the IVSC to establish the potential royalty that might be required from the SAIV to republish IVS 2015 as SAIV Standards. In doing so, I indicated at the same time to the IVSC that the SAIV had been in communication with the SACPVP to establish its position with regard to the adoption of such Standards for the benefit of all registered valuers, as the SAIV was concerned with regard to a duplicated *pro rata* royalty liability for its members, should the latter take place in due course.

Subsequently a meeting took place in February this year between the SAIV and the SACPVP, at which it was agreed that, rather than the SAIV, the SACPVP would now open negotiations with the IVSC to enable it to disseminate IVS 2015 to all registered valuers. The IVSC has since indicated to me that this could be done by way of the adoption by the SACPVP of IVS 2015 as its own SA National Standards or by reaching agreement with the IVSC as to the best way of disseminating IVS 2015 to all registered valuers.

The current SACPVP web site indicates that it has already adopted IVSC standards, which would imply that, in consultation with the IVSC, it now intends to adopt the latter course of action, in terms of which IVS 2015 should then become "generally accepted valuation standards in terms of Section 45(1) of the Act.

International Valuation Standards - SAIV adopted standards

At my initial IVSC meeting in Melbourne in 1993 as the SAIV representative, I was privileged to have been able to participate in the determination of the IVSC international definition of 'market value' over the two-day period.

This was followed by Management Board agreement on the components of the conceptual framework to such definition, which the Management Board considered to be a necessary amplification of such definition. It was interesting to see that the main protagonists leading up to the settlement of such determination were America and Australia on the one side and the United Kingdom on the other.

The 1995 agreed international definition of market value was as follows:

Market Value is the estimated amount for which a property should exchange on the *valuation date* between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.

Since then, the IVSs have been reviewed and updated on a regular basis, with the Institute adopting the 7th edition in 2005 as its own Standards. IVS 2013 is the latest to have been published, with IVS 2015 due to appear later this year. Some of the periodic updating has arisen from interface between the IVSC and those responsible for the production of International Financial Reporting Standards (IFRS).

To bring South Africa right up to date, the following updated 'market value' definition and conceptual framework extract is taken from pages 18-20 of International Valuation Standards 2013:

29. Market Value definition:-

Market value is the estimated amount for which an asset or liability should exchange on the *valuation date* between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.

30. The definition of *market value* shall be applied in accordance with the following conceptual framework:

(a) "the estimated amount" refers to a price expressed in terms of money payable for the asset in an arm's length transaction. *Market value* is the most probable price reasonably obtainable in the market on the valuation date in keeping with the *market value* definition. It is the best price reasonably obtainable by the seller and the most advantageous price reasonably obtainable by the buyer. The estimate specifically excludes an estimated price inflated or deflated by special terms or circumstances such as atypical financing, sale and leaseback arrangements, special considerations or concessions granted by anyone associated with the sale, or any element of *special value;*

(b) "an asset should exchange" refers to the fact that the value of an asset is an estimated amount rather than a predetermined amount or actual sale price. It is the price in a transaction that meets all the elements of the market value definition at the valuation date;

(c) "on the *valuation date*" requires that the valuation is time specific as of a given date. Because markets and market conditions may change, the estimated value may be incorrect or inappropriate at another time. The valuation amount will reflect the actual market state and circumstances as at the *valuation date*, not those at any other date;

(d) "between a willing buyer" refers to one who is motivated, but not compelled to buy. This buyer is neither over eager nor determined to buy at any price. This buyer is also one who purchases in accordance with the realities of the current market and with current market expectations, rather than in relation to an imaginary or hypothetical market that cannot be demonstrated or anticipated to exist. The assumed buyer would not pay a higher price than the market requires. The present owner is included amongst those who constitute "the market";

(e) "and a willing seller" is neither an over eager not a forced seller prepared to sell at any price, nor one prepared to hold out for a price not considered reasonable in the current market. The willing seller is motivated to sell the asset at market terms for the best price attainable in the open market after proper marketing, whatever that price may be. The factual circumstances of the actual owner are not a part of this consideration because the willing seller is a hypothetical owner;

(f) "in an arm's length transaction" is one between parties who do not have a particular or special relationship, eg parent and subsidiary companies or landlord and tenant, that may make the price level uncharacteristic of the market or inflated because of an element of *special value*. The *market value* transaction is presumed to be between unrelated parties, each acting independently;

(g) "after proper marketing" means that the asset would be exposed to the market in the most appropriate manner to effect its disposal at the best price reasonably obtainable in accordance with the *market value* definition. The method of sale is deemed to be that most appropriate to obtain the best price in the market to which the seller has access. The length of exposure time is not a fixed period but will vary according to the type of asset and market conditions. The only criterion is that there must have been sufficient time to allow the asset to be brought to the attention of an adequate number of market participants. The exposure period occurs prior to the valuation date;

(h) "where the parties had each acted knowledgeably, prudently" presumes that both the willing buyer and the willing seller are reasonably informed about the nature and characteristics of the asset, its actual and potential uses and the state of the market as of the *valuation date*. Each is further presumed to use that knowledge prudently to seek the price that is most favourable for their respective positions in the transaction. Prudence is assessed by referring to the state of the market at the *valuation date*, not with benefit of hindsight at some later date. For example, it is not necessarily imprudent for a seller to sell assets in a market with falling prices at a price that is lower than previous market levels. In such cases, as is true for other exchanges in markets with changing prices, the prudent buyer or seller will act in accordance with the best market information available at the time;

(i) "and without compulsion" establishes that each party is motivated to undertake the transaction, but neither is forced or unduly coerced to complete it.

31. The concept of *market value* presumes a price negotiated in an open and competitive market where the participants are acting freely. The market for an asset could be an international market or a local market. The market could consist of numerous buyers and sellers, or could be one characterised by a limited number of market participants. The market in which the asset is exposed for sale is one in which the asset being exchanged is normally exchanged (see paras 15-19 above).

32. The *market value* of an asset will reflect it highest and best use. The highest and best use is the use of an asset that maximises its potential and that is possible, legally permissible and financially feasible. The highest and best use may be for a continuation of an asset's existing use or for some alternative use. This is determined by the use that a market participant would have in mind for the asset when formulating the price that it would be willing to bid.

33. The *highest and best use* of an asset valued on a stand-alone basis may be different from its highest and best use as part of a group, when its contribution to the overall value of the group must be considered.

34. The determination of the highest and best use involves consideration of the following:

(a) to establish whether a use is possible, regard will be had to what would be considered reasonable by market participants,

(b) to reflect the requirement to be legally permissible, and legal restrictions on the use of the asset, eg zoning designations, need to be taken into account,

(c) the requirement that the use be financially feasible takes into account whether an alternative use that is physically possible and legally permissible will generate sufficient return to a typical market participant, after taking into account the costs of conversion to that use, over and above the return on the existing use.

The above extract from the International Valuation Standards 2013 is reproduced with kind permission of the International Valuation Standards Council (IVSC) that owns the copyright. No responsibility is accepted by the IVSC for the accuracy of the information as republished. The approved text of the International Valuation Standards 2013 is that published by the IVSC in the English language and copies may be obtained via the website www.ivsc.org.

Summary

Apart from:

the utilisation of the words "asset or liability" in place of the original 1993 word "property" in *the market value* definition;

the significant mandatory application of the conceptual framework to the *market value* definition; and

the amplification of the previous comments in paragraphs 31-34, the overall wording of this section of IVS 2011 has remained essentially the same as it was in IVS 2005, which standards were adopted *in toto* by the SAIV at the time as its own SAIV standards.

The periodic upgrading of IVS by the IVSC indicates that such IVSs are under constant review, and that valuers should accordingly be kept fully up to date with regard to the future IVS amendments, presumably through appropriate action by both the SACPVP and the SAIV in the future.

The inclusion of the words "or liability" in the IVS 2013 market value definition emphasises the fact that market values can be negative, and in this regard the Cape Town Stadium might be considered to have been a prime example of such a negative market value, if it had been valued for the purposes of GV 2012, with its annual negative return running to some R44.6 million per annum at that stage.

The conceptual framework provides considerable amplification of the market value definition components, which should be of assistance to both municipal valuers and valuation roll objectors in the country in their respective approaches to the establishment of market values in terms of the MPRA, and ensuing appeal arguments, where applicable.

One cannot but wonder how many South African valuers have in fact heard of, or gone to the trouble of acquainting themselves with, IVSs since the adoption by the SAIV of IVS 2005 as its own standards and, in particular, the updated market value definition and the mandatory application of the conceptual framework thereto.

As a result, I have felt it necessary to produce the above in full, as the market value definition core component of IVSs, in the interests of furthering overall improvement in general valuation standards in the country.

It may well be that Valuation Appeal Boards or South African valuers in general would currently not be prepared to acknowledge IVSs as generally accepted valuation standards in terms of Section 45(1), although the bulk of the SAIV membership, which represents some 55% of SACPVP registered valuers, should be aware of such IVS 2005 standards, as they are contained within their Members' Handbook.

In the interests of both the private and the public sectors, the clarification of what is meant by Section 45(1) "generally accepted valuation standards" needs to established, and the implementation of the recent SACPVP proposal to disseminate IVS 2015 to all registered valuers should in my view have the resultant effect of firmly establishing such standards as generally accepted valuation standards in terms of Section 45(1) of the Act.

The sooner this takes place the better, as far as I am concerned, with a 2015 Cape Town General Valuation Roll due for publication in early 2016.

It would also represent the culmination of what I hoped to achieve for the benefit of the South Africa valuation profession since I first applied on the SAIV National Executive's behalf for IVSC membership in 1985, some 30 years ago. ■

By Robin Marten

Aurora starts production at 94 MW wind farm

Aurora Wind Power has started commercial operations at its 94 MW West Coast 1 wind farm, near Vredenburg. The wind farm will allow for the offset of an estimated 5.6 million tonnes of carbon dioxide over the 20-year duration of its power purchase agreement (PPA) with State-owned utility Eskom.

The project forms part of government's Renewable Energy Independent Power Producer Procurement Programme (REIPPPP), through which the country aimed to procure 3 625 MW of renewable energy by the end of 2016, to help curb its reliance on coal for electricity and contribute towards carbon emission reduction objectives.

Aurora Wind Power is a venture between French power and natural gas services provider Engie, South African banking firm Investec Bank and black-owned and managed investment holding company KTH. Danish wind turbine manufacturer Vestas supplied 47 2 MW wind turbines for the project and will be responsible for the long-term maintenance of the facility.

The construction of West Coast 1, which started in June 2013, created more than 600 jobs, 450 of which were filled by members of the surrounding communities. The operation of the wind farm will also create permanent jobs for some community members. "The success factors that contributed to this achievement are solid partnerships, strong support from both local and national authorities and highly motivated teams," Aurora Wind Power CEO Tristan Bosser said. ■

By Megan van Wyngaardt of Creamer Media's Engineering News