

**Explanatory Note**

**Procedure for Land Sale  
under the Application System**

Under the annual Land Sale Programme, the Lands Department publishes a list of sites available for sale upon application ('the Application List'). The Application List contains information on lot number, location, use, site area, and the estimated earliest available date for each of the sites.

Parties interested in applying for the sites must forward to the Lands Department Headquarters the following:-

- (i) an application in the format shown at [Appendix I](#) indicating the 'minimum price' they are prepared to bid;
- (ii) an Agreement for Auction or Tender cases ("the Agreement") (in the format at [Appendix II/Appendix IIA](#)). The Agreement must be duly signed or sealed (as appropriate) by the applicant; and
- (iii) a cheque or cashier order for an amount equivalent to 5% of the minimum price, subject to a maximum of HK\$25 million, made payable to the Government of the Hong Kong Special Administrative Region and drawn on a bank licensed under Section 16 of the Banking Ordinance as a deposit. If a cheque is submitted, it must be certified good for payment by the bank on which it is drawn for 3 months from the date of the application.

With regard to the deposit stated in (iii) above, the applicant may, as an alternative, submit a bank guarantee as security for discharge of the Applicant's obligations under the Agreement. The bank guarantee must be issued by a bank licensed under Section 16 of the Banking Ordinance to the Government of the Hong Kong Special Administrative Region and valid for 3 months from the date of the application. The bank guarantee must be in terms acceptable to the Government and in a similar form as shown at [Appendix III](#). The Government reserves the right to require the bank to prove that the bank guarantee has been duly executed. The bank will effect payment of the guaranteed sum as specified in the guarantee:

- (a) if, at the time the site is offered for sale at public auction, there is no bid of an amount equivalent to or more than the minimum price; or
- (b) if, at the time the site is offered for sale by public tender, the applicant fails to tender at or above the minimum price or pay the deposit in the manner stipulated in the Tender Notice or withdraws the tender before the award of tender.

It should be noted that if the applicant submits a bank guarantee and it is accepted, the following conditions will apply:

- (a) before taking part in a public auction, the applicant is required to comply with the Land Auction Procedures issued by the Lands Department; and
- (b) for public auction or public tender of the site, the applicant has to pay the deposit in the manner stipulated in the Conditions of Sale or in the Tender Notice.

The application should not be submitted more than two months before the 'estimated earliest available date' specified in the Application List.

Upon receipt of the application, the Lands Department will usually within two weeks inform the applicant, in writing, whether the minimum price is acceptable. If the minimum price is acceptable, the Lands Department will sign and date the Agreement. It will then write to the applicant, enclosing a copy of the signed Agreement and inform the applicant of the intended method of sale, i.e. auction or tender, and the intended auction date or tender closing date, as appropriate. In general, the date will be around five weeks from the date of signing the Agreement. The Lands Department will also advertise in the media and the Government Gazette and distribute the Conditions of Sale or Tender Notice (also available at the Lands Department web site <http://www.landsd.gov.hk>). Normally, there will be two notices in the Government Gazette before the auction date or the tender closing date.

If the minimum price is not acceptable, the cheque or cashier order (without interest) or the bank guarantee will be returned to the applicant and no further action will be taken on the application.

Depending on the method of disposal, the following arrangements will be applicable: -

**(1) Auction**

If the applicant is successful in purchasing the site, the deposit stated in (iii) above will be applied as part of the premium except that, if a bank guarantee is submitted and accepted, in which case the applicant shall pay the deposit in the manner stipulated in the Conditions of Sale. If, however, the site is sold and the applicant is not the purchaser, then the cashier order or cheque (without interest) or the bank guarantee will be returned to the applicant, on the next working day immediately following the auction. *(Note: Subject to a request made in writing before the date of auction, arrangements can be made for returning the cashier order or cheque at the auction venue immediately after the completion of the auction proceedings.)*

If no bid in an amount equivalent to or in excess of the minimum price is received, the deposit stated in (iii) above will be forfeited or in the case of a bank guarantee, the Director will be entitled to call upon the bank according to the terms of the bank guarantee.

**(2) Tender**

If a tender is submitted by the applicant, the deposit stated in (iii) above (except it is a bank guarantee) will be treated as the deposit required to be submitted with the Form of Tender and the applicant will not be required

to submit another cheque or cashier order with the tender on the basis that the said deposit remains subject to all the terms and conditions of the Agreement. If a bank guarantee is submitted and accepted, the applicant shall pay the deposit in the manner stipulated in the tender document.

If the applicant is successful in purchasing the site, the deposit will be applied as part of the premium. If, however, the applicant is unsuccessful in obtaining the site, but has honoured the undertaking under the Agreement, then the cashier order or cheque (without interest) or the bank guarantee will be returned to the applicant within one week after the tender award.

If the applicant fails to submit a tender at or above the minimum price or withdraws the tender before the award of the tender, then the deposit stated in (iii) above will be forfeited or in the case of a bank guarantee, the Director will be entitled to call upon the bank according to the terms of the bank guarantee.

2 February 2012

**Application List**  
**Application For Land Sale**

Director of Lands,  
Lands Department,  
20/F, North Point Government Offices,  
333 Java Road, North Point,  
Hong Kong.

(Attn.: Deputy Director (General))

Date :

Dear Sir,

**Lot No. :** \_\_\_\_\_

I hereby apply for the above lot shown on your Application List. I am prepared to bid a minimum price of HK\$ \_\_\_\_\_ for the lot.

I enclose :-

- (i) an Agreement for Auction or Tender cases duly signed; and
- <sup>#</sup>(ii) a cheque or cashier order in an amount equivalent to 5% of the minimum price, subject to a maximum of HK\$25 Million, being the deposit and certified good for payment up to 3 months from date of this application.
- <sup>#</sup>(ii) a bank guarantee for an amount equivalent to 5% of the minimum price subject to a maximum of HK\$25 Million. The bank guarantee shall be valid for 3 months from date of this application.

I understand that you will inform me within two weeks whether my application is successful or not.

Yours faithfully,

(Name of Applicant)

for and on behalf of \*

Contact Address : \_\_\_\_\_

\_\_\_\_\_

Telephone No. : \_\_\_\_\_

Fax No. : \_\_\_\_\_

<sup>#</sup>Delete as appropriate

\*Name of Company

**Note** : The completed application form should be submitted in a sealed plain envelope addressed to the Director of Lands and marked "**For the attention of the Deputy Director (General)**" and delivered either by hand or by registered post to the above address.



this Agreement will terminate and neither party will have any further claims against the other under this Agreement or otherwise.

- (II) (a) If the lot is offered for sale by public tender and the Applicant fails to tender at or above the minimum price or withdraws the tender prior to award of tender, the deposit will be forfeited.
  - (b) If a tender is submitted by the Applicant, the deposit under this Agreement will be treated as the deposit required to be submitted with the Form of Tender and the Applicant will not be required to submit a separate cheque or cashier order with the tender provided that, by executing this Agreement, the Applicant hereby acknowledges that the deposit remains subject to all the terms and conditions of this Agreement.
  - (c) Subject to sub-clause (II)(b) of this paragraph and if the Applicant bids successfully for the lot by tender, the deposit will be applied in part payment of the premium tendered and the Applicant will pay the balance of the premium in accordance with the Conditions of Sale by Tender of the lot.
  - (d) Cheques or cashier orders tendered in payment of the deposit will be held uncashed by the Government pending the award of the tender.
  - (e) If, for any reason, the lot is not made available for sale within three months from the date of this Agreement or the Applicant tenders at or above the minimum price but the tender is not accepted, the cheques or cashier orders referred to in sub-clause (II)(d) of this paragraph will be returned to the Applicant but without interest and this Agreement will terminate and neither party will have any further claims against the other under this Agreement or otherwise.
- 4. Nothing herein contained will prejudice the terms and conditions upon which the lot is to be sold and except as provided in Clause 3 (I)(c) or (II)(b) hereof (as the case may be), nothing herein contained shall be construed as modifying the Conditions of Sale by Auction or by Tender of the lot.
  - 5. If the deposit is forfeited under the terms of this Agreement, neither party shall have any further claim whatsoever against the other under this Agreement or otherwise.
  - 6. The Government is not bound to sell at any bid submitted by the Applicant for the lot.

IN WITNESS whereof the Assistant Director/Lands Department, being duly authorized by the Chief Executive of the Hong Kong Special Administrative Region so to do, has signed this Agreement on behalf of the Government and the Applicant has/have set his/their hand(s)/and seals hereto the day and year first above written.

Witness to the signature of the Applicant :

Signature of the Applicant/Seal of the Applicant and authorized signature(s) (if the Applicant is a corporation) :

.....  
Name in Capital Letters :

.....  
Name in Capital Letters :

.....  
H.K.I.D. Card No .....

.....  
Address .....

.....  
Witness to the signature of  
Assistant Director/Lands Department

.....  
For and on behalf of the  
Chief Executive of the Hong Kong  
Special Administrative Region

.....  
Civil Servant  
Lands Department

.....  
Assistant Director/Lands Department



against the other under this Agreement or otherwise.

- (II) (a) If the lot is offered for sale by public tender and if the Applicant fails to tender at or above the minimum price or pay the deposit in the manner stipulated in the Tender Notice or withdraws the tender before the award of tender, the Director will be entitled to call upon the Bank according to the terms of the bank guarantee.
  - (b) If the Applicant submits a tender, the Applicant shall submit the deposit required to be submitted with the Form of Tender, and if the Applicant bids successfully for the lot by tender, the deposit will be applied in part payment of the premium tendered and the Applicant will pay the balance of the premium in accordance with the Conditions of Sale by Tender of the lot. The bank guarantee will be returned to the Applicant.
  - (c) If, for any reason, the lot is not made available for sale within three months from the date of this Agreement or the Applicant tenders at or above the minimum price but the tender is not accepted, the bank guarantee will be returned to the Applicant and this Agreement will terminate and neither party will have any further claims against the other under this Agreement or otherwise.
- 4. Nothing contained in this Agreement will prejudice the terms and conditions upon which the lot is to be sold.
  - 5. If the guaranteed sum specified under the bank guarantee has been fully paid by the Bank under clause 3(I)(a) or clause 3(II)(a) of this Agreement, neither party shall have any further claim whatsoever against the other under this Agreement or otherwise.
  - 6. The Government is not bound to sell at any bid submitted by the Applicant for the lot.

IN WITNESS whereof the Assistant Director/Lands Department, being duly authorized by the Chief Executive of the Hong Kong Special Administrative Region so to do, has signed this Agreement on behalf of the Government and the Applicant has/have set his/their hand(s)/and seals hereto the day and year first above written.

Witness to the signature of the Applicant :

Signature of the Applicant/Seal of the Applicant and authorized signature(s) (if the Applicant is a corporation) :

.....  
Name in Capital Letters :

.....  
Name in Capital Letters :

.....  
H.K.I.D. Card No .....

.....  
Address .....

.....  
Witness to the signature of  
Assistant Director/Lands Department

.....  
For and on behalf of the  
Chief Executive of the Hong Kong  
Special Administrative Region

.....  
Civil Servant  
Lands Department

.....  
Assistant Director/Lands Department

## Appendix III

### Bank Guarantee

THIS DEED OF GUARANTEE is given this [ ] day of [ ]

Two Thousand and [ ]

By [ ], a licenced bank under Section 16 of the Banking Ordinance (Chapter 155) of the Laws of the Hong Kong Special Administration Region having its registered office situate at [ ] (hereinafter called “the Bank”)

To the Government of the Hong Kong Special Administrative Region (hereinafter called “the Government”).

WHEREAS :

(1) [ ] whose registered office is situated at [ ] (“the Applicant”) intends to apply for purchase of the Government land to be known as [ ] (“the lot”) listed by the Lands Department of the Government to be available for sale pursuant to the Land Sale Programme under the Application System.

(2) In submitting the application (“the Application”) to the Lands Department for the intended purchase of the lot, the Applicant is required to offer the minimum price (“Minimum Price”) they are prepared to bid for the lot and produce a bank guarantee for an amount of [HK\$ ] (“the Guaranteed Sum”) as security for discharge of the Applicant’s obligations under the Agreement for Auction or Tender Cases (“the Agreement”) to be entered into between the Government and the Applicant.

(3) The Bank has agreed to provide the bank guarantee to the Applicant in the manner hereinafter appearing.

NOW THIS DEED WITNESSES as follows :-

1. In consideration of the agreement by the Government to process the Application, the Bank HEREBY GUARANTEES that it will upon receipt from the Director of Lands (“the Director”) or his duly authorized officer of a demand in writing immediately pay to the Government the Guaranteed Sum in cash or in such other form as the Director may require. A certificate by the Director shall be conclusive evidence that the Applicant has failed to perform an obligation under the Agreement.

2. The liability of the Bank under this guarantee shall commence on the date of the Application and shall cease as follows :

(a) on the [ ] day of [ ] [ ], that is, on the expiry of three calendar months from the date of the Application; or

(b) upon payment by the Bank of the Guaranteed Sum in full to the Government; or

(c) when this guarantee is returned to the Applicant by the Director;

whichever shall be the earlier, but otherwise this guarantee shall be and remain in full force and effect.

3. Save as provided in Clause 2 above, the Bank shall not be discharged or released from this guarantee by any arrangement or agreement to be made between the Applicant and the Government with or without the consent of the Bank. It is hereby declared that no alteration of any terms of the Agreement or the Conditions of Sale in respect of the lot shall in any way release the Bank from its liability under this guarantee.

4. To avoid any doubt, the Bank shall assume primary liability for payment of the Guaranteed Sum and the Government shall not be required to enforce payment or otherwise seek other remedies (if any) under the Agreement against the Applicant before demanding payment of the Guaranteed Sum from the Bank.

5. The liability of the Bank under this guarantee shall be limited to the Guaranteed Sum only.

6. All documents or demands arising out of or in connection with this guarantee shall be served :

- (a) upon the Government at the Lands Department Headquarters at 20<sup>th</sup> Floor, North Point Government Offices, 333 Java Road, North Point, Hong Kong for the attention of the Deputy Director (General) ; and
- (b) upon the Bank, at [ ] for the attention of [the Department].

7. This guarantee shall be governed by and construed in accordance with the laws of the Hong Kong Special Administrative Region.

IN WITNESS WHEREOF the Bank has duly executed this Deed of Guarantee the day and year first above written.

SEALED with the Common Seal )  
of the Bank and SIGNED by )  
) )  
for and on behalf of the Bank )  
whose signature(s) is/are verified by: )

[ or  
SIGNED SEALED AND )  
DELIVERED for and on behalf of )  
the Bank by its lawful attorney )  
) )  
whose signature(s) is/are verified by: )