

Information Note
relating to
the Pilot Scheme for Arbitration on Land Premium

This Information Note sets out the general information for applicants of lease modification transactions ^(Note 1) (“**the Applicants**”) which may be suitable for arbitration under the Pilot Scheme for Arbitration on Land Premium (“**the Pilot Scheme**”). Under the Pilot Scheme, the Government may select and offer the Applicants of certain cases the option to use arbitration to determine the amount of land premium payable. The Applicants may also apply for arbitration under the Pilot Scheme in respect of their respective lease modification transactions under processing. The Applicants should consider the following general information when they are offered the option to arbitrate or before they submit applications for arbitration under the Pilot Scheme to the Lands Department (“**LandsD**”).

2. A number of refinements have been implemented under the Pilot Scheme since August 2020 (summarised in **Appendix I**). The Pilot Scheme has been extended for two years until 23 October 2024. The relevant Legislative Council

Brief on the refinements to the Pilot Scheme can be accessed at the link below:

https://www.landsd.gov.hk/doc/en/exc_mod/arbitration/Arbitration_Doc6.pdf

3. Scope of Arbitration

The subject to be arbitrated is confined to determination of the amount of land premium only. Fundamental issues with policy and sector-wide ramifications will not be accepted for arbitration under the Pilot Scheme, such as where the Applicants do not accept a land premium offer by virtue of their disagreement with the Government on other matters such as lease interpretation (for example, how the “industrial” use permitted under the lease should be interpreted) and/or Government policies (for example, the land premium payable is the difference between the respective values “before” and “after” the lease modification, and/or compensation offered and paid by the Applicants for affected residents cannot be premium-deductible).

^(Note 1) The reference to lease modification transactions includes lease modifications to be effected by way of land exchanges.

4. Premium Payable

Arbitration is a consensual dispute resolution process where the parties agree to submit their disputes to the Arbitral Tribunal for determination. Prior to the commencement of the arbitration process, an upper limit and a lower limit on premium payable will be set and agreed by the Applicants and the Government. If the amount awarded by the Arbitral Tribunal is within the upper and lower limits, the premium payable will be the amount awarded by the Arbitral Tribunal; whereas if the amount awarded by the Arbitral Tribunal is higher than the upper limit or lower than the lower limit, the premium payable will be the upper or lower limit, as the case may be.

5. Applications

In general, LandsD's processing of the Applicants' applications for arbitration is as follows:-

- (a) For the avoidance of doubt, every application for arbitration submitted to LandsD pursuant to the Pilot Scheme will be considered on its own merits by LandsD at its sole and absolute discretion. LandsD may accept or reject any such application. Without prejudice to such discretion, either an Applicant or LandsD may propose to resort to arbitration as a means to resolve the differences over the amount of land premium payable for the lease modification transaction if both the Applicant and the Government (collectively, "**the Parties**") fail to agree on a land premium amount after at least one appeal on premium.
- (b) Applications should be submitted to the Valuation Section of LandsD at 19/F North Point Government Offices, 333 Java Road, Quarry Bay, Hong Kong, for the attention of the Chief Estate Surveyor / Valuation for consideration. If and when an application for arbitration is accepted for further processing, LandsD will approach the Applicant and may proceed with the issue of binding basic terms offer letter ("**the BBTO letter**") for the lease modification transaction, together with the Arbitration Agreement to the Applicant ("**the Offer**") providing the arbitration option for consideration by the Applicant, or the Applicant may make further

premium appeal. A summary on key features of an Arbitration Agreement is at **Appendix II** for reference.

- (c) A Fact Sheet and a List of Disputes for the case in question will be annexed to and form part of the Arbitration Agreement. The Fact Sheet will set out the basic terms for the lease modification transaction and any other relevant matters such as those concerning lease interpretation, the Government policies, and practices in relation to land premium valuation and determination including the Government's established valuation basis and other essential valuation components already agreed between the Parties, and hence not subject to arbitration. The List of Disputes will set out specific issues not agreed between the Parties (normally those relating to the valuation components used for arriving at the land premium amount) which will be determined by the Arbitral Tribunal when it decides on the premium amount.
- (d) The arbitration option will lapse if it is not accepted by the Applicant by the due date as stated in the Offer. The Applicant may make further premium appeal in accordance with the Offer and any further premium appeal submitted by the Applicant will be processed through the normal premium negotiation procedures.

6. Deposit

The Applicant is required to pay 15% of the Government's latest land premium offer as deposit upon the Applicant's signing of the Arbitration Agreement and acceptance of the Offer. At least 10% of the 15% deposit has to be cash deposit and the Government may consider accepting the payment of the remaining 5% by way of a performance bond to be cashed only upon the Applicant's defaulting.

7. Restriction and Alienation

There will be restrictions on alienation of the subject lot and / or on transfer of shareholding (in case the Applicant is a company) upon the signing of the Arbitration Agreement and acceptance of the Offer until completion of the lease modification transaction by due execution of the documents by the Parties. In

this connection, the Applicant is required to execute and return a Deed of Undertaking (“**the Deed of Undertaking**”) to LandsD.

8. The Applicant will be required to return the executed Arbitration Agreement together with the Deed of Undertaking and the deposit to LandsD in accordance with the terms and conditions of the BBTO Letter.

9. Other Points to Note

- (a) The Pilot Scheme shall not constitute any representation on the part of the Government or give rise to any expectation on the part of the Applicant that LandsD will offer the arbitration option to the Applicant or that any application for arbitration submitted to LandsD will be processed or accepted or that any legal obligations to proceed with the lease modification transaction have been created. Where necessary, LandsD will prioritise the case work arising from the Pilot Scheme with reference to general criteria as illustrated in **Appendix III**.
- (b) The arbitral proceedings will be kept confidential. The amount of premium charged will be disclosed through usual registration of the lease modification transaction documents in the Land Registry. The Government will reserve the right, in its absolute discretion, to disclose for public information the cases put to arbitration, the arbitrators appointed, the actual time taken for the arbitration process, the amount of premium charged and other relevant information such as the location of the lot and lot number, etc., after execution of the relevant lease modification transactions and the documents registered in the Land Registry.
- (c) The Arbitral Tribunal will comprise three arbitrators, all of whom will be mutually agreed and appointed by both the Government and the Applicant. The Chairman of the Arbitral Tribunal will be a legal professional, who may be a retired judge, or a qualified lawyer with at least 10 years of post-qualification experience, and will be nominated and agreed by the Parties. Both parties may propose nomination(s) and agree by consensus. As regards the other two Co-Arbitrators, they will be valuation professionals, specifically

professional surveyors who have been (i) qualified for a minimum of 7 years as a member of a professional body of surveyors, the membership of which is accepted for the purpose of registration under the Surveyors Registration Ordinance (Cap. 417) and (ii) with at least 10 years of experience in land matters and valuation and (iii) a Registered Professional Surveyor under the Surveyors Registration Ordinance (Cap. 417) ^(Note 2). The Applicant and the Government (i.e. LandsD) will each nominate one valuation professional who would be subject to the other party's agreement. The Applicant is advised to engage competent professionals to assist it throughout the arbitral process including the appointment of arbitrators.

- (d) The arbitrators will be required to make a written declaration as to their independence and impartiality; and in so doing disclose any matters that might be relevant in this regard, and confirm their on-going duty of disclosure during the arbitration process. Arbitrators appointed by the Government and the Applicant under the Pilot Scheme are agents in the context of section 9 of the Prevention of Bribery Ordinance (Cap. 201) (“**the POBO**”). They will be required to declare that they have not solicited or accepted, and undertake that they will not so solicit or accept, any advantage as defined under the POBO in connection with that arbitration case in question. Declarations to be completed by each arbitrator are at **Appendix IV**. Once this declaration is signed and attached to the Arbitration Agreement signed by the Government and the Applicant, the arbitrators will be made parties to the Arbitration Agreement and subject to all provisions therein as to the proper conduct of the arbitral proceedings. Anti-collusion provisions will be included in the Arbitration Agreement. The Government reserves the right, in its absolute discretion, to disclose the declaration.
- (e) Each party shall bear its own legal and other costs. The costs of the arbitral proceedings (other than each party's own costs), including the fees and expenses of the Arbitral Tribunal (which shall

^(Note 2) Candidates who fulfill the requirements of (i) and (ii) above but not (iii) may still be appointed, provided that the 10 years of experience for purpose of (ii) comprises substantial experience in land matters and professional valuation in Hong Kong.

cover the fees of appointing the three arbitrators), shall be borne by the Parties in equal shares, unless, in its discretion, the Arbitral Tribunal considers a different apportionment appropriate.

10. This Information Note together with the Appendices are issued for general information and reference purpose only. LandsD reserves all rights to modify the whole or any part of the same and other details of the Pilot Scheme without any prior notice. Nothing herein shall in any way prejudice or fetter the Government's position on the matter including the landlord's discretion on the part of the Government.

Appendices

- I A summary of refinements introduced in August 2020 to the Pilot Scheme
- II A summary on key features of an Arbitration Agreement
- III General criteria for consideration of cases under the Pilot Scheme
- IV Declarations by arbitrators

**Summary of the Refinements to the Pilot Scheme
for Arbitration on Land Premium**

The following refinements will be implemented with immediate effect.

A. Setting of the Upper and Lower Limits on Premium Payable

2. Prior to the commencement of the arbitration process, an upper limit and a lower limit will be set and agreed by the Applicant and the Government, setting a range for the premium payable, in the following ways :-

- (a) if the amount eventually awarded by the Arbitral Tribunal is within the upper and lower limits, the premium payable will be the amount awarded by the Arbitral Tribunal;
- (b) if the amount eventually awarded by the Arbitral Tribunal is higher than the upper limit, the premium payable will be the upper limit; and
- (c) if the amount eventually awarded by the Arbitral Tribunal is lower than the lower limit, the premium payable will be the lower limit.

3. The upper limit refers to the premium offered by LandsD in its last binding basic terms offer (BBTO) prior to the signing of the Arbitration Agreement.

4. The lower limit refers to the last counter-offer made by the Applicant in its last premium appeal, before either party extends an invitation to the other to settle the premium negotiation by arbitration under the Pilot Scheme.

5. If both the Applicant and the Government agree in-principle to use arbitration to determine the amount of premium payable, LandsD will issue one more BBTO together with an Acceptance Letter and the proposed Arbitration Agreement for the Applicant's acceptance. The upper and lower limits, which are binding on both Parties, will be stipulated in this last BBTO. If the Applicant decides to resort to arbitration, it should signify its acceptance

by signing and returning to LandsD the Acceptance Letter and the Arbitration Agreement (which will be subject to the terms and conditions of the BBTO).

6. No adjustments to the upper and lower limits will be allowed after the Arbitration Agreement is signed.

7. In order not to affect the Arbitral Tribunal's independent judgement on the arbitral award, the Parties will be prohibited to disclose to the Arbitral Tribunal the upper and lower limits, or the premium amounts offered by the Applicant and/or LandsD respectively during the past premium negotiations and in the pre-arbitration correspondence. The Arbitral Tribunal will be at liberty to decide on any award it finds appropriate with its independent assessment, which may or may not go beyond the upper or lower limit, but if it does go beyond either of the limits, the pre-agreed arrangement in paragraph 2 above will apply. In that case, no party shall seek recognition or enforcement in any forum and for any purpose of the determination of the amount of premium in the arbitral award.

B. Lowering Triggering Threshold to One Appeal

8. Currently, the triggering threshold for arbitration by the Parties is after at least two appeals by the Applicant to allow exchange of views between the Applicant and the Government before resorting to arbitration. In order to allow both parties the option of having earlier access to the Pilot Scheme, the triggering threshold will be lowered from two premium appeals to **one appeal**.

C. Allowing Submission to Comment on the Other Party's Case

9. A standard step will be added to the arbitration procedure to allow the Parties to make reply submissions on the other party's valuation report and written submissions, within 2 weeks after the submission of respective valuation reports to the Arbitral Tribunal. The purpose of this additional step is to allow the Parties an opportunity to draw the Arbitral Tribunal's attention to any particular issues contained in the other side's valuation report and written submissions. In light of this new step, the Arbitral Tribunal is expected to hand down the award within 12 weeks instead of 10 weeks under the existing framework after the formation of the Arbitral Tribunal.

D. Disclosing Information of Completed Cases

10. In order to provide more information to the industry to facilitate their consideration of using the Pilot Scheme, LandsD will, in its absolute discretion, disclose the following information about the concluded cases that have been referred to arbitration pursuant to the Pilot Scheme at LandsD's website : the location, the lot number, the composition of the Arbitral Tribunal appointed, the actual time taken for the arbitration process and the amount of premium payable.

A summary on key features of an Arbitration Agreement

1. Submission to Arbitration and Scope of Jurisdiction

The Tribunal's jurisdiction shall be strictly limited to determination of the issues set out in the List of Disputes submitted by the Parties.

2. Law and Rules Governing Determination of the Issues Set Out in the List of Disputes

- (i) The Tribunal shall determine the issues set out in the List of Disputes exclusively in accordance with:
 - (a) the Agreed Fact Sheet;
 - (b) the evidence submitted by the Parties; and
 - (c) the laws and regulations of the Hong Kong Special Administrative Region.
- (ii) The Valuation Date for land premium shall be the date the Tribunal herein was first constituted or such other date as provided for in the Arbitration Agreement.

3. Procedural Law and Procedural Rules

The arbitration shall be conducted subject to and in accordance with:

- (i) the Hong Kong Arbitration Ordinance (Cap. 609) ("the Ordinance"), including sections 4 and 7 of Schedule 2, which are applied pursuant to section 99(d) of the Ordinance;
- (ii) the Domestic Arbitration Rules of the Hong Kong International Arbitration Centre (2014) ("the HKIAC Rules") as modified and set out in the Arbitration Agreement; and
- (iii) the IBA Guidelines on Conflicts of Interest in International Arbitration (2014).

4. Constitution of the Tribunal

- (i) The Tribunal shall consist of 3 arbitrators (all of whom shall have equal voting rights).
- (ii) Each party shall nominate one arbitrator ("Co-Arbitrator"), who shall be appointed upon the agreement of the other party whose agreement should not be unreasonably withheld. Each such appointment shall be made within 28 days of the date of the Arbitration Agreement.

- (iii) The Chairman of the Tribunal shall be appointed by agreement of the Parties, within 28 days of the date of the Arbitration Agreement.
- (iv) If there is any failure to appoint a Co-Arbitrator or Chairman within the specified time periods, the appointment shall be made by the Hong Kong International Arbitration Centre (“HKIAC”), pursuant to s.24 of the Ordinance, upon the written request of either party.

5. Qualifications of Arbitrators

- (i) Each Co-Arbitrator shall:
 - (a) be a Registered Professional Surveyor under the Surveyors Registration Ordinance (Cap. 417) (“the SRO”); and
 - (b) have been qualified for a minimum of seven years as a member of a professional body of surveyors, the membership of which is accepted for the purpose of registration under the SRO; and
 - (c) have at least 10 years of experience in land matters and professional valuation.
- (ii) Candidates who fulfil the requirements of (b) and (c) above, but not (a) above, may still be appointed, provided that the 10 years of experience comprises substantial experience in land matters and professional valuation in Hong Kong.
- (iii) The Chairman shall be a qualified lawyer with at least 10 years post-qualification experience, or a retired judge.

6. Declarations by Arbitrators

On appointment, each Co-Arbitrator and the Chairman shall complete, sign, and circulate to all parties a Declaration in the form attached to the Arbitration Agreement and shall immediately disclose any changes or updates to the Declaration throughout the arbitral proceedings.

7. Agreed Initial Procedures

- (i) Unless the Tribunal determines otherwise, a “documents-only” procedure shall be adopted, and there shall be no oral hearing, and neither party shall have any right to require such.
- (ii) Unless the Tribunal implements a different timeframe, within 6 weeks from the Tribunal’s first constitution, each party shall simultaneously exchange and serve on the Tribunal (a) full written submissions on all issues set out in the List of Disputes, including each party’s own assessment of the applicable land premium (“Written Submissions”),

and (b) the evidence relied on by each party including, but not limited to the documents referred to in the Written Submissions (“Valuation Evidence”). For the avoidance of doubt, the Parties may (but are not obliged to) serve, as part of the Valuation Evidence, signed witness statements as to fact, valuation report and/or expert’s report of other disciplines if such evidence is necessary for the fair and effective disposal of the issues set out in the List of Disputes.

- (iii) Unless the Tribunal implements a different timeframe, within 2 weeks after service of the Written Submissions and the Valuation Evidence, each party may exchange and serve on the Tribunal reply submissions on each other’s Written Submissions and Valuation Evidence.
- (iv) The Tribunal may direct any party to provide further submissions, evidence or information as it considers necessary.

8. The Award

- (i) The Tribunal shall issue its final award within 12 weeks from the date the Tribunal was first constituted.
- (ii) The Tribunal may extend the time limit for a further period of up to 4 weeks, provided that:
 - (a) the time limit has not yet expired; and
 - (b) there are exceptional circumstances justifying the extension of time.
- (iii) The Tribunal may further extend the time limit for additional periods (beyond 16 weeks from the date the Tribunal was first constituted), provided that:
 - (a) there are exceptional circumstances justifying each extension of time; and
 - (b) on each occasion, the time limit as extended, has not yet expired; and
 - (c) each such extension shall not exceed 16 weeks from the date such extension is ordered; and
 - (d) the date on which each such extension is ordered shall be deemed the operative Valuation Date; and
 - (e) for each such extension, the Tribunal shall allow the Parties an opportunity to simultaneously exchange and serve on the Tribunal updated assessments of the applicable land premium, and updated market evidence, by way of supplement to their Valuation Reports.

- (iv) All decisions of the Tribunal shall be by a majority vote.

9. Costs of the Arbitration

Each party shall bear its own legal and other costs and the costs of the arbitral proceedings shall be borne by the Parties in equal shares, unless, in its discretion, the Tribunal considers a different allocation appropriate.

10. Confidentiality

- (i) Save as provided in section 18 of the Ordinance, the arbitral proceedings are private and confidential between the Parties and the Tribunal, and no information relating to the arbitration shall be published or disclosed by any person.
- (ii) The amount of land premium charged shall be disclosed through usual registration of the land transaction document in the Land Registry under the Land Registration Ordinance (Cap. 128).
- (iii) The Government reserves the right, in its absolute discretion, to disclose information to the general public about the concluded cases that have been referred to arbitration pursuant to the Pilot Scheme for Arbitration on Land Premium, including but not limited to the location of the lot and lot number, the composition of the Tribunal appointed, the actual time taken for the arbitration process and the amount of premium payable for each concluded case.
- (iv) The Government reserves the right, in its absolute discretion, to disclose the Declarations completed by each arbitrator pursuant to paragraph 6 above.

11. Prevention of Bribery Ordinance

For the avoidance of doubt, every arbitrator appointed by the Parties shall be deemed an “agent” for the purposes of section 9 of the Prevention of Bribery Ordinance (Cap. 201), and hence subject to sanctions under the said Ordinance should they breach the provisions thereof.

**General Criteria for Consideration of
Cases under the Pilot Scheme for Arbitration on
Land Premium**

Depending on such factors as the number of acceptable cases to be considered and the capacity of LandsD, the Department of Justice and the availability of the arbitrator-candidates in handling multiple arbitration cases at the same time, LandsD will adopt certain criteria in guiding the prioritization of case work. For general information and illustration purposes only, higher priority may be given to :

1. “high yield” cases in terms of net increase in flat number or net gain in non-residential gross floor area;
2. cases with a wider premium gap; and
3. cases with fewer or more straightforward issues in dispute.

Declarations to be completed by each arbitrator as a condition of appointment:

1. Independence & Impartiality

Pursuant to:

--s.25 of the Hong Kong Arbitration Ordinance (Cap. 609);

--Article 3 of the HKIAC Rules; and

--the IBA Guidelines on Conflicts of Interest in International Arbitration (2014):

(A) No circumstances to disclose

I am impartial and independent of each of the Parties and intend to remain so. To the best of my knowledge, there are no circumstances, past or present, likely to give rise to justifiable doubts as to my impartiality or independence. I shall promptly notify the Parties and the other arbitrators of any such circumstances that may subsequently come to my attention during this arbitration.

OR

(B) Circumstances to disclose

I am impartial and independent of each of the Parties and intend to remain so. Attached is a statement of (a) my past and present professional, business and other relationships with the Parties and (b) any other relevant circumstances.

[Include statement.]

I confirm that those circumstances do not affect my independence and impartiality. I shall promptly notify the Parties and the other arbitrators of any such further relationships or circumstances that may subsequently come to my attention during this arbitration.

2. Prevention of Bribery Ordinance

I confirm that I have not solicited or accepted, and hereby undertake not to solicit or accept, any advantage as defined under the Prevention of Bribery Ordinance (Cap. 201) in connection with this arbitration.

I further confirm that I am to be deemed an “agent” for the purposes of section 9 of the said Ordinance, and hence subject to sanctions thereunder in the event of any breach.

3. No-Collusion

I confirm that:

(a) I shall not have any unilateral discussion, or discussion outside of the arbitral proceedings, with any party (including, without limitation, any party’s affiliate, subsidiary, parent company, agent, representative or any other person or entity acting on its behalf) in relation to this case, and that if any such discussion is at any stage initiated by any party, I shall immediately report this to the other members of the Tribunal and the other party.

(b) Upon arriving at a determination of the amount of land premium payable, I shall make a written and signed declaration that, in regard to this determination, I have not colluded, and will not collude, with any party, or related person or entity, in any manner whatsoever.

4. Availability to Act

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently and in accordance with all time limits specified.

5. Arbitration Agreement

I hereby agree to be bound as a party to the Arbitration Agreement between the Parties dated [], and subject (inter alia) to all provisions therein as to the conduct of the proceedings.

6. Disclosure of this Declaration

I hereby agree that this Declaration may be made public by the Government, in its absolute discretion.