

LCQ19: Pilot Scheme for Arbitration on Land Premium

Following is a question by the Hon Tony Tse and a written reply by the Secretary for Development, Mr Michael Wong, in the Legislative Council today (November 7):

Question:

It is learnt that it is not uncommon for lease modification/land exchange applications dragging on for years as a consensus over the amount of land premium cannot be reached between land owners and the Lands Department (LandsD). In view of the above, the Government introduced the Pilot Scheme for Arbitration on Land Premium (the Pilot Scheme) in October 2014. The Government may invite lease modification/land exchange applicants (the applicants) to participate in the Pilot Scheme whereby the land premium issue in respect of their applications may be settled through arbitration. In this connection, will the Government inform this Council:

(1) of the criteria adopted by LandsD for determining whether or not to invite an applicant to participate in the Pilot Scheme;

(2) of the respective numbers of lease modification/land exchange applications that have been received and handled by LandsD since October 2014 and, among them:

(i) the number of cases in which the applicants were invited to participate in the Pilot Scheme; among such cases, the respective numbers of cases in which the invitation was accepted by the applicants, arbitrations are being/have been conducted, and arbitrations were concluded; the arbitration time taken for those cases in which arbitrations were concluded, and the amount of public expenditure concerned; the number of cases in which applicants who had declined such invitations subsequently reached a consensus with LandsD over the amount of land premium, as well as the respective shortest, longest and average time taken for negotiations in respect of such cases; and

(ii) the number of cases in which the applicants had not been invited to participate in the Pilot Scheme but they reached a consensus with LandsD over the amount of land premium, as well as the respective shortest, longest and average time taken for negotiations in respect of such cases;

(3) whether it has reviewed the effectiveness of the Pilot Scheme; if so, of the anticipated completion time;

(4) as there have been views that the subject to be arbitrated under the Pilot Scheme being confined to the amount of land premium has rendered the Pilot Scheme unattractive, whether the Government will explore expanding the

scope of the subjects to be arbitrated under the Scheme; and

(5) whether it will review the method for calculating the amount of land premium, and take into consideration the values of the existing structures erected on the relevant land lots and the economic activities thereon, as well as the expenses need to be incurred for demolishing the structures thereon; if not, of the reasons for that?

Reply:

President:

The Pilot Scheme for Arbitration on Land Premium (Pilot Scheme) introduced in October 2014 aims to provide an additional avenue for both the applicant (Applicant) in lease modification/land exchange cases and Lands Department (LandsD) to expedite the conclusion of land premium negotiations. The arbitration mechanism allows an independent and impartial third party to adjudicate the premium payable based on the arbitration terms and conditions agreeable to both sides, which in turn would help speed up land supply for housing and other uses.

My reply to various parts of the questions is as follows:

(1) After substantive exchanges of views of the Applicant and the Government, generally speaking, after at least two appeals submitted by the Applicant for the land premium and no agreement can still be reached, either the Applicant or the Government may propose to settle the premium negotiation by arbitration. LandsD will adopt certain criteria in according priority to cases, such as:

- (a) higher priority to "high yield" cases in terms of net increase in flat number (e.g. not less than 200) or net gain in non-residential GFA (gross floor area) (e.g. not less than 20,000 square metres);
- (b) higher priority to cases with a wider premium gap; and
- (c) higher priority to cases with fewer issues in dispute or with relatively straightforward disputes.

Both parties have to consent before arbitration can be used for adjudicating the premium payable.

(2) Since October 2014 until end of September 2018, LandsD received a total of 218 valid application cases for lease modification or land exchange. During the same period, premia were agreed for a total of 396 cases, including cases for technical modification resulting in no increase in residential or other floor area (the application cases received were not necessarily the same as the cases agreed during the period). The cases handled during the period include :

- (i) a total of 32 invitations were issued by LandsD to the Applicants (involving 16 developments, some of which were invited more than once at different junctures) to settle premium negotiations through arbitration under

the Pilot Scheme. Among those 16 developments, one case proceeded to arbitration and was concluded in December 2015. In that particular case, it took about 11 weeks from the formation of the Arbitral Tribunal to the issue of the final award. The Government incurred expenditure of around \$1.3 million (including the Government's share of the arbitration fees and professional expenses), excluding in-house manpower and resources deployed.

For the other 15 developments, there were two cases in which the Applicants had agreed in principle to proceed with arbitration, but eventually decided to accept the land premium proposed by LandsD through the normal premium negotiation mechanism before proceeding to arbitration. Therefore, arbitration was not necessary. In respect of the remaining 13 developments of which the Applicants declined the invitations, seven of them subsequently settled the premium figure with the Government through the normal premium negotiation mechanism. The shortest and the longest negotiation time spans for the concerned cases were two years and 10 years respectively, with a median of four years. At present, Applicants in four remaining cases have chosen to continue to negotiate the land premium with LandsD, while and the Applicants in the two other remaining cases withdrew their lease modification or land exchange applications.

Separately, LandsD has received one application for arbitration which did not meet the policy objective of increasing land supply, and hence the application has been declined. Subsequently, that case was settled through normal premium negotiation procedures.

(ii) Since October 2014, 386 cases (mostly not meeting the "two appeals" criteria and/or involving technical modification resulting in no increase of residential or other floor area) were not invited to participate in the Pilot Scheme, but the Applicants of these cases reached a consensus on the land premium amount with LandsD. According to available information, the shortest and longest negotiation time spans for those cases were three months and eight years respectively, with a median of 1.5 years.

(3) Given the limited number of completed arbitration case and general support from stakeholders to retain the arbitration route, the Government announced on October 19, 2018 that the Pilot Scheme will be extended for two years until October 23, 2020. We note stakeholders' concerns over the absence of an upper limit for the arbitral award being a disincentive for potential applicants, as well as calls for relaxing the thresholds for triggering arbitration etc. We are now exploring possible refinements to the detailed implementation arrangements, and will consult relevant professionals and stakeholders at an appropriate time, with a view to encouraging arbitration applications during the extension period so that both the Government and stakeholders may gain more experience through actual cases.

(4) The scope of the Pilot Scheme focuses on the amount of premium, and does not cover disputes on policy and lease interpretation matters. The ambit of the Arbitral Tribunal does not include settling disagreements over the established principles in premium assessment, which are fundamental issues with policy and sector-wide ramifications. If an Applicant disagrees on lease

interpretation, that is a legal matter which should be addressed by way of legal avenues.

(5) In general, for lease modification (or land exchange) involving development and redevelopment projects, the premium will be equivalent to the difference between the full market value of the cleared site under the original lease conditions as compared with under the proposed new conditions as at the time of valuation. In assessing the value of the cleared site, the different conditions under the original lease and the proposed new lease, the development forms and parameters permissible under the prevailing planning and building restrictions as well as the property market and the overall economy will be taken into account. The demolition cost of existing buildings will be included as part of the redevelopment cost. We consider that the land premium assessment approach as adopted by the Government has been working effectively over the years, and that the established valuation principles are fair and reasonable.