

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.

LCQ2: Management of typhoon shelters

Following is a question by the Hon Steven Ho and a written reply by the Secretary for Transport and Housing, Mr Frank Chan Fan, in the Legislative Council today (November 7):

Question:

It has been reported that many vessels were stranded or capsized when super typhoon Mangkhut hit Hong Kong in September this year. Various types of vessel operators have said that the incident highlighted the problem of insufficient berthing spaces at typhoon shelters and their poor management. In this connection, will the Government inform this Council:

- (1) whether it knows the occupancy rates of the various typhoon shelters and sheltered anchorages during the onslaught of Mangkhut (with a breakdown by vessel lengths permitted by typhoon shelters);
- (2) given that whenever typhoons hit Hong Kong, some typhoon shelters are always full as many work boats and visiting vessels berth at such shelters, rendering it impossible for local vessels to berth at their homeport, how the Government tackles the problem;
- (3) given that during the onslaught of Mangkhut, a number of vessels were damaged, were stranded or sank along the coasts of Sai Kung, whether the Government will improve the facilities of the Sai Kung Sheltered Anchorage (such as strengthening the breakwaters) to avoid the recurrence of similar incidents;
- (4) given that according to my observations and those of various types of

vessel operators, some vessels were not berthed at typhoon shelters in an orderly manner, and some work boats, being pushed by wind and waves, even bumped into other vessels because such boats were loosely moored, (i) how the Government ensures that vessels at typhoon shelters are berthed in an orderly and tidy manner and will not affect other vessels, and (ii) how it will strengthen the relevant publicity work;

(5) given that the number of various classes of vessels has been increasing incessantly in recent years, and that fishing vessels and pleasure vessels berthed in close proximity will easily collide with one another and give rise to compensation claims, whether the Government will study (i) demarcating the berthing spaces in typhoon shelters according to vessel type, (ii) expanding the various typhoon shelters, and (iii) solving the problem of insufficient berthing spaces and inadequate embarking and disembarking facilities for small fishing vessels; if so, of the details; if not, the reasons for that;

(6) given that the Marine Department has, on a trial basis since August last year, designated a specific area within the Kwun Tong Typhoon Shelter for the exclusive mooring of non-pleasure vessels, of the progress and effectiveness of the measure, as well as the next course of action to be taken by the Government; and

(7) although the Government has estimated that the supply of sheltered space across the territory could adequately meet the demand throughout the period from 2014 to 2030, the actual occupancy rates of the typhoon shelters located in relatively remote areas (e.g. Hei Ling Chau Typhoon Shelter) are rather low given the long plying time required, and the problem of insufficient berthing spaces in typhoon shelters remains, whether the Government will consider (i) conducting planning for typhoon shelters having regard to the demand for sheltered space on a district basis, and (ii) providing additional typhoon shelters in those districts where the highest occupancy rates of the existing ones have reached 90 per cent or above; if so, of the details; if not, the reasons for that?

Reply:

President,

My responses to the question raised by the Hon Steven Ho are as follows:

(1) The occupancy rates of typhoon shelters during the course of the super typhoon Mangkhut in Hong Kong are set out at Annex. The Marine Department (MD) does not maintain breakdown of occupancy rates by vessel lengths permitted in typhoon shelters.

(2) and (3) During the course of the super typhoon Mangkhut in Hong Kong, the MD disseminated information of typhoon shelters which were already full through radio and television broadcasts in accordance with the usual practice, so as to facilitate vessels to use other typhoon shelters for safe berthing timely. According to MD's records, among the 14 typhoon shelters in Hong Kong, three (namely Rambler Channel, To Kwa Wan and Tuen Mun Typhoon Shelters) had reached their full occupancy when the Typhoon Warning Signal

No. 8 was hoisted during super typhoon Mangkhut in Hong Kong. There was still sheltered space available for use in the remaining 11 typhoon shelters, including the Aberdeen West, Cheung Chau and Shau Kei Wan Typhoon Shelters which were more frequently used by fishing vessels, as well as the Yim Tin Tsai Typhoon Shelter in Sai Kung. Having regard to the aforementioned utilisation, there is sufficient sheltered space in the Sai Kung district and across the territory in Hong Kong for local vessels to take refuge during typhoons.

The Civil Engineering and Development Department will commission a consultancy study lasting for about 18 to 24 months to conduct a comprehensive review of the low-lying coastal and windy locations as well as relevant storm surge and wave analysis, with a view to assessing the impacts of extreme weather to these areas. Based on the outcomes of the study, the Government will formulate appropriate protection measures including the options of improvement works and management measures to strengthen the resilience to wave impacts at the coastal areas.

(4) On management of typhoon shelters, all local vessels may enter and remain in any typhoon shelter at any time based on their own operational needs on a first-come-first-served basis, except in special circumstances such as when vessels are carrying dangerous goods or when the length of a vessel has exceeded the length limit of the typhoon shelter concerned. However, a vessel shall not be anchored within the passage area of the typhoon shelter, nor should it obstruct the free access of other vessels to any unoccupied space in the typhoon shelter. During the course of the super typhoon Mangkhut, the MD staff carried out patrols in typhoon shelters to ensure that vessels were berthed in an orderly manner and that the passage areas were unobstructed. The MD staff also gave advice, direction and assistance to vessel operators to ensure that vessels could be anchored in an orderly manner at suitable locations in the typhoon shelters and take refuge at safe berthing spaces.

(5) to (7) The MD has taken note of the trade's concern that vessels of different classes (in particular pleasure vessels (PVs) and non-PVs) berthing in close proximity to each other within typhoon shelters may cause minor collisions leading to compensation claims. To minimise such occurrences, apart from carrying out patrols from time to time to ensure that vessels are berthed in an orderly manner and would not cause obstruction to other users, the MD has designated a specific area in the southern part of the Kwun Tong Typhoon Shelter for exclusive mooring of non-PVs on a trial basis. The MD has been closely monitoring the daily operation, utilisation and effectiveness of the measure. Based on initial observations, a certain number of PVs have accordingly been relocated to the northern part of the typhoon shelter for berthing. There are also berthing spaces available for use in both the northern part (for use of all classes of vessels) and the southern part (for use of non-PVs) of the typhoon shelter. Depending on the outcomes of the trial measure, the MD will further consult the trade and consider the feasibility of applying similar arrangements in other typhoon shelters.

The Government is committed to ensuring that sufficient and suitable

sheltered space is provided within the Hong Kong waters for local vessels to take refuge during typhoons or inclement weather so as to ensure the safety of these vessels and their crew members. Regarding the demand and supply of sheltered space in Hong Kong, the MD's latest regular assessment has shown that the overall supply of sheltered space in Hong Kong waters is sufficient in meeting the estimated demand from local vessels up till 2030. Sheltered space including gazetted typhoon shelters, sheltered anchorages and berthing facilities in marinas are located in different parts of Hong Kong waters to meet the berthing demand from local vessels.

EMSD announces latest sampling results for legionella at fresh water cooling towers

The Electrical and Mechanical Services Department (EMSD) today (November 7) announced that the department tested 104 water samples collected from cooling towers in 91 buildings in its routine inspections in October this year. None of them was detected to have a total legionella count at or above the upper threshold, which is 1 000 colony-forming units per millilitre. The latest statistics are set out in Annex 1.

The EMSD also announced the locations of buildings which were served with nuisance notices during the preceding three-month period as the total legionella count was found in the fresh water cooling towers to be equal to or above the upper threshold. Details can be found in Annex 2. The EMSD publishes the latest statistics of the above information on a half-monthly basis on its website (www.emsd.gov.hk/en/other_regulatory_services/cooling_towers/water_sampling/index.html#ct-stat).

The EMSD reminds the owners of fresh water cooling towers that they have the responsibility to design, operate and maintain cooling towers properly. They should arrange regular inspections, timely maintenance and periodic testing of the water quality in their cooling towers in accordance with the Code of Practice for Fresh Water Cooling Towers issued by the department to prevent the proliferation of legionella.

LCQ17: Promoting opening up of data

Following is a question by the Hon Charles Mok and a written reply by the Secretary for Innovation and Technology, Mr Nicholas W Yang, in the Legislative Council today (November 7):

Question:

It has been reported that Hong Kong was ranked the 24th, a ranking lagging substantially behind those of Taiwan, Japan and Singapore, in the Global Open Data Index published last year by the Open Knowledge Foundation in the United Kingdom (UK). Hong Kong even scored zero in areas of open data for the company register and for land ownership. There are views that Hong Kong needs to catch up expeditiously in respect of opening up data. On the other hand, it is mentioned in this year's Policy Address that the Government has firmed up the policy and measures on opening up government data, and required all government departments to formulate and publish their annual open data plans (annual plans) by the end of this year. In this connection, will the Government inform this Council:

(1) whether it will provide additional manpower and resources to the various bureaux/government departments for execution of the annual plans;

(2) whether it took into consideration perspectives such as information security, personal privacy and government revenue when it formulated the policy on opening up data, and how it will determine the extent of opening up various types of data;

(3) whether it will, by making reference to the relevant practices in the UK and Canada, draw up an "open government licence" to stipulate (i) that the Government is the copyright owner of the datasets concerned, and (ii) the rights and obligations of the users of the datasets, so as to facilitate the extensive use of the datasets;

(4) whether it will, by making reference to the practices in other jurisdictions, (i) formulate open data lists for the Chief Executive's Office, the offices of the various Secretaries of Departments and Directors of Bureaux, as well as the various bureaux and government departments, and (ii) determine the extent of opening and reusing the data concerned;

(5) whether it will add the following government datasets to the lists of government data to be opened up so that members of the public can use such data free of charge: (i) the Company Register, (ii) the Land Register, (iii) the Business Register, (iv) the register of vehicles, (v) bankruptcy and compulsory winding-up records, (vi) birth/death records and (vii) marriage records; if so, of the details and the timetable; if not, the reasons for that;

(6) whether it will put in place the relevant performance indicators and

feedback mechanisms to ensure continuous improvement in the quality of government data being opened up;

(7) whether it will review the requests for access to government information previously made by members of the public, in order to gauge the public's demand for the various types of data, and establish a mechanism for receiving and handling the public's requests for access to datasets;

(8) whether it has plans to promote the opening up of data among the various District Councils, public bodies, universities and non-profit-making organisations, and issue codes of best practices to them;

(9) whether it will, in collaboration with public and private organisations, examine the obstacles hindering the opening up of data, and establish a platform to facilitate data sharing, with a view to promoting data sharing among various sectors in an equal, mutually-beneficial and safe manner; and

(10) whether it will adopt measures (e.g. providing relevant teaching materials and organising competitions on application development) to step up efforts to promote the use of those data opened up, so as to encourage the industry to use such data to develop various applications and tools?

Reply:

President,

In September 2018, the Office of the Government Chief Information Officer (OGCIO) issued guidelines to all government bureaux and departments (B/Ds) on the new open data policy and implementation measures. B/Ds are required to progressively open up their data under the "data.gov.hk" portal for free use by the public, and formulate and publish their annual open data plans on their websites every year. Their first annual open data plan should be published by end 2018.

After consulting the relevant B/Ds, our reply to the various parts of the question is as follows:

(1) B/Ds will formulate and implement their annual open data plans having regard to their manpower and resources. The OGCIO will render necessary technical and financial support to individual B/Ds for enhancing their departmental information technology systems for releasing relevant datasets.

(2) In formulating their annual open data plans, B/Ds will take into account factors such as information security, personal privacy and financial implications to the Government, in addition to the needs of the public and the industry, and ensure that the opening up of data complies with relevant ordinances such as the Personal Data (Privacy) Ordinance (Cap. 486). B/Ds should in principle open up their data for free use by the public as far as possible.

(3) and (4) In formulating the new open data policy and relevant measures, we

have made reference to the experience of other countries and regions, as well as relevant international reports and studies such as the analysis of the Global Open Data Index. The new policy requires B/Ds to release datasets in machine-readable format and with timely updates.

According to the existing terms and conditions in using the "data.gov.hk" portal, members of the public are allowed to browse, download, distribute, reproduce, print and hyperlink such data, on a free-of-charge basis, for both commercial and non-commercial uses, on the condition that they have to state clearly the data source in all copies and acknowledge the intellectual property rights of the Government.

(5) Regarding the suggestion to upload full information on the seven registers or records raised in this question to the "data.gov.hk" portal, the response from relevant B/Ds is as follows:

Items (i) and (v): Company Register and Bankruptcy and Compulsory Winding-up Records

The Companies Registry and the Official Receiver's Office provide company search service, and bankruptcy and compulsory winding-up search services respectively to the public in accordance with the relevant legislation. To prevent improper use of personal data obtained via the search services, the Companies Registry and the Official Receiver's Office require users to state the purposes of conducting the searches, in accordance with the recommendations made in the Privacy Commissioner's Report on Survey of Public Registers Maintained by Government and Public Bodies in July 2015.

Item (ii): Land Registers

At present, members of the public can either access through Internet or visit the Land Registry's Customer Centre and the New Territories Search Offices to conduct searches of land registers and place order for copies of land records for properties anywhere in the territory after paying the fees stipulated in the Land Registration Fees Regulations (Cap. 128B).

Item (iii): Business Register

According to the Inland Revenue Department (IRD), the public can enquire the business registration number of a business free of charge through the Online Business Registration Number Enquiry services via the GovHK portal (www.gov.hk). The IRD is planning to include from mid-2019 onwards the monthly number of newly registered businesses in the lists of government data to be opened up.

Item (iv): Register of Vehicles

According to the Transport Department (TD), information and data contained in the Register of Vehicles involve personal data of registered vehicle owners. Such information should only be used for traffic and transport matters. Currently, pursuant to Regulation 4 of the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374E), residents can make application to the TD for Certificates of Particulars of Motor Vehicles online, by post or in person at the TD's licensing offices. Upon payment of a prescribed fee, residents can obtain information on individual vehicles as

listed out in the Register of Vehicles.

Items (vi) and (vii): Birth/Death Records and Marriage Records

Currently, members of the public may access the figures of registration of births, deaths and marriages in Hong Kong on the website of the Immigration Department (ImmD). The ImmD is actively considering inclusion of such figures in the lists of government data to be opened up.

(6)&(7) Under the new open data policy, B/Ds will take into account the views and suggestions of the public on their annual open data plans. Besides, the OGCI0 will play a co-ordinating role to collect the annual open data plans of B/Ds, and provide a full list under the "data.gov.hk" portal for soliciting views and suggestions from the public.

(8) Apart from opening up more government data, B/Ds are required to encourage public organisations (e.g. district councils, universities and non-profit-making organisations) and private enterprises to open up their data related to public facilities or with high degree of public interest, and include relevant specific measures in their annual open data plans.

(9) and (10) The OGCI0 will collaborate with public and private organisations through various channels, such as seminars and competitions, to promote open data and discuss the associated challenges and problems. For example, the OGCI0 organised the Data.One App Competition in 2014, and also supported industry organisations to organise Smart City Datathon 2018 in October 2018 to encourage various sectors to develop innovative application solutions using the open data on the "data.gov.hk" portal.

[Result of the tenders of the People's Bank of China RMB Bills held on November 7, 2018](#)

The following is issued on behalf of the Hong Kong Monetary Authority:

Result of tenders of the People's Bank of China RMB Bills held on November 7, 2018:

Tender Result

Tender Date : November 7, 2018

Bills available for Tender : Three-month RMB Bills
:

Issuer : The People's Bank of China
Issue Number : BCMKFP18022

Issue Date : November 9, 2018

Maturity Date : February 8, 2019 (or the
closest coupon payment date)

Application Amount : RMB 42,615 million

Issue Amount : RMB 10,000 million

Average accepted Coupon
Rate : 3.42 %

Highest accepted Coupon
Rate
(Bills' Coupon) : 3.79 %

Lowest accepted Coupon
Rate : 2.50 %

Allocation Ratio : Approximately 34.87 %

Tender Result

Tender Date : November 7, 2018

Bills available for Tender : One-year RMB Bills
:

Issuer : The People's Bank of China
Issue Number : BCMKFP18023

Issue Date : November 9, 2018

Maturity Date : November 9, 2019 (or the
closest coupon payment date)

Application Amount : RMB 32,855 million

Issue Amount : RMB 10,000 million

Average accepted Coupon
Rate : 3.88 %

Highest accepted Coupon
Rate
(Bills' Coupon) : 4.20 %

Lowest accepted Coupon
Rate : 2.80 %

Allocation Ratio : Approximately 46.99 %