

PRESS RELEASE
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HKIS Views on Proposed Pilot Scheme for Arbitration on Land Premium

The Hong Kong Institute of Surveyors (HKIS) welcomes this new initiative as it would facilitate the negotiation process between private land owners and the Government. The HKIS considers that implementation of the Pilot Scheme should be given cautious consideration as it might in one hand affect the land development process and on the other hand the public revenue.

HKIS submitted the suggestions as below:

1. The time to start the arbitration mechanism and the substance of arbitration

- The HKIS opines that arbitration should be performed on case by case basis, arbitration should only be encouraged to consider after a lengthy period of negotiation, say after the third premium appeal negotiation.
- In order to have an effective and efficient arbitration process, it is recommended that the arbitration should only proceed after both parties (the Government and the land owner) have agreed on the fundamental principles affecting the assessment of the premium such as the basis of valuation, the interpretation of the lease conditions, the policy issues and other key development parameters.
- The arbitration will then focus on the key variables which would affect the before and after land value such as the selection of comparables, the opinion of Gross Development Value, the amount of construction cost, the development period, the discount rate, etc. Any other issues in dispute, e.g. interpretation of lease terms and conditions, development parameter / potential etc shall be separately settled or agreed or cleared by court decision prior to arbitration.

2. The time to complete the arbitration

- The process of arbitration is recommended to be completed within 3 months. That is, 3 months from signing of arbitration agreement to award of decision.

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3. The arbitration panel

- The arbitration panel shall consist of three arbitrators, unless the parties agree in writing otherwise:-
 - A) The Chairperson of the panel shall be a barrister or solicitor with arbitration qualification admitted in a recognised jurisdiction with not less than 7 years experience and should also be familiar with property development and land matters.
 - B) One expert member shall be a General Practice Surveyor who is a corporate member of the HKIS with a minimum post-qualification experience of not less than 7 years who can afford the necessary expertise in understanding the standards of valuation and complex problems in the development.
 - C) The other panel member is from the general public who is normally a member of a professional institution (i.e. the HKIS, Hong Kong Institute of Certified Public Accountants, Hong Kong Institute of Architects (HKIA), Law Society of Hong Kong, etc) or people with high standing.
- This composition with diverse background can give the balance of legal proceedings, expertise in valuation and one person with common sense which may enhance the breadth of the decision-making process.
- To serve the purpose of the Pilot Scheme, a separate list would be formed by the HKIS in due course.

4. Terms and conditions of the agreement to arbitration

- Once the arbitration agreement is signed, then the appointment of arbitrator can be made within a specified time.
- The basis of valuation should be the market value as defined by the HKIS. The definitions and assumptions of “Before Value” and “After Value” shall be clearly set out in the agreement including whether it is vacant possession, with or without existing buildings etc.
- The date of the arbitration agreement shall be the valuation date. This will facilitate the preparation of the valuation submissions and the subsequent value determination – this is also an established practice in rent review cases and capital value determinations under joint venture agreements, etc.

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- The costs of the arbitrator(s) and the proceedings are to be shared equally between the two parties. Each party will bear its own professional costs.
- The arbitration award is final and binding on both parties.

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About the Hong Kong Institute of Surveyors

Established in 1984, The Hong Kong Institute of Surveyors is the only professional organization representing the surveying profession in Hong Kong. As of 31 March 2014, the number of members reached 8,841, of which 6,007 were corporate members. The Institute's work includes setting standards for professional services and performance, establishing codes of ethics, determining requirements for admission as professional surveyors, and encouraging members to upgrade skills through continuing professional development.

The Institute has an important consultative role in government policy making and on issues affecting the profession. We have advised the Government on issues such as unauthorized building works, building safety campaign, problems of property management, town planning and development strategies, construction quality and housing problems. We are working on amendments to standard forms of building contract and have issued guidance notes on floor area measurement methods.

For more details, please refer to HKIS website: <http://www.hkis.org.hk>.

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