

INFORMATION NOTE

Land Supply in Hong Kong

1. Background

1.1 The land supply system in Hong Kong has undergone marked changes in recent years, particularly with the introduction of the Application List system in 1999 to supplement the regular land auction and tender programmes. The Application List system subsequently has become the only way for selling government land since January 2004.

1.2 The purpose of this information note is to provide Members of the Panel on Planning, Lands and Works with information on recent developments in land supply in Hong Kong, particularly through auctions/tenders, private treaty grants, lease modifications and land exchanges.

2. Land usage in Hong Kong

2.1 Hong Kong's total land area amounted to 110 700 hectares at end-2004¹, of which 84 500 hectares or 76% was non-built-up land. Developed land accounted for the remaining 26 200 hectares or 24% of the total land area.

¹ Including Hong Kong Island, Kowloon, New Territories and the outlying islands.

Table 1 — Land usage as at end-2004

Class	Approximate area (hectares)	% of the total land area
A. Developed land		
1) Residential	7 700	7.0
Private residential ⁽¹⁾	2 500	2.3
Public residential ⁽²⁾	1 700	1.5
Rural settlement ⁽³⁾	3 500	3.2
2) Commercial	300	0.3
3) Industrial	2 500	2.3
4) Government, institutional & community facilities	2 300	2.1
5) Transportation	5 300	4.8
6) Open space	2 100	1.9
7) Vacant land	2 900	2.6
8) Other urban or built-up land	3 100	2.8
<i>Sub-total</i>	<i>26 200</i>	<i>23.8</i>
B. Non-built-up land		
1) Agricultural land	7 300	6.6
2) Woodland/shrubland/grassland	73 100	66.0
3) Wetland	500	0.4
4) Barren land	900	0.8
5) Water area	2 700	2.4
<i>Sub-total</i>	<i>84 500</i>	<i>76.2</i>
Total	110 700	100.0

Notes: (1) Referring to residential land developed by private developers except village houses, Home Ownership Scheme (HOS)/Private Sector Participation Scheme (PSPS) and temporary housing areas.

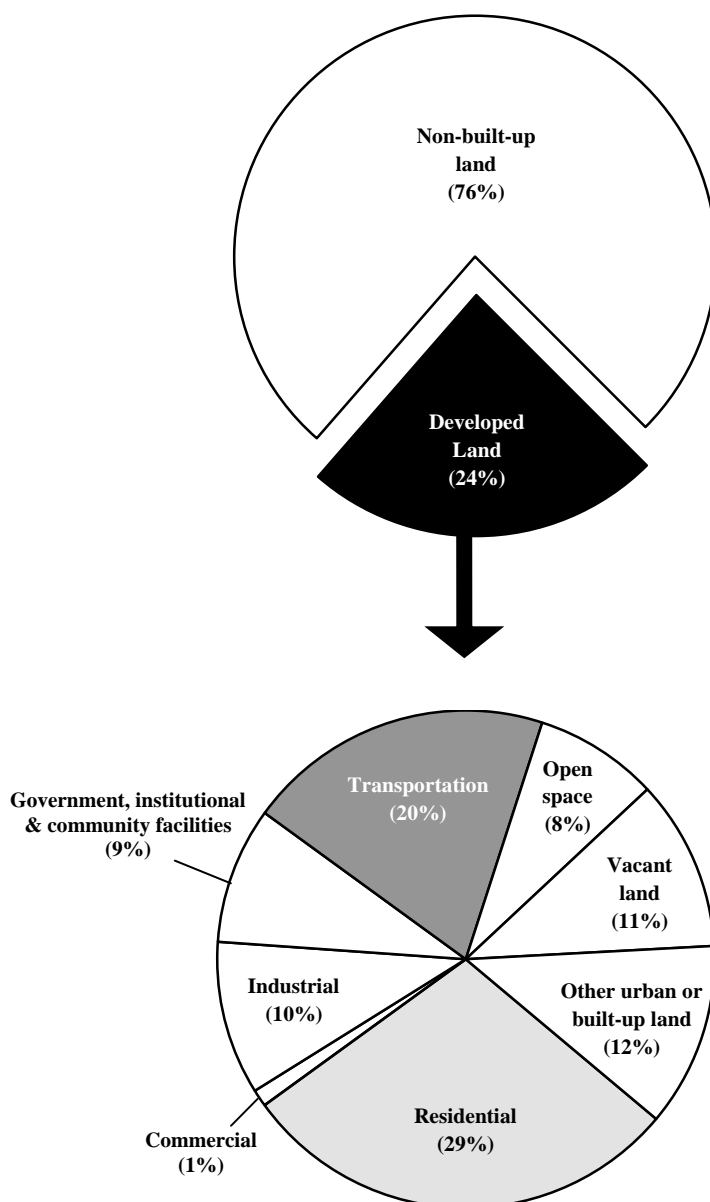
(2) Including HOS/PSPS and temporary housing areas.

(3) Including village housing and temporary structures.

Source: Planning Department.

2.2 Of the total developed land at end-2004, 29% or 7 700 hectares were for residential developments.² The corresponding figures for the development of transportation infrastructure (roads, railways and airport) were 5 300 hectares and 20%. Meanwhile, there were 2 900 hectares of vacant development land available, accounting for 11% of the total developed land.

Figure 1 — Classification of land use in Hong Kong as at end-2004



Source: Planning Department.

² These included 2 500 hectares of private residential area, 1 700 hectares of public residential area and 3 500 hectares of rural settlement area.

3. Overview of the Government's land policy

3.1 Article 7 of the Basic Law sets out the source of authority and legal basis of the Government's land policy. It stipulates that "[t]he land and natural resources within the Hong Kong Special Administrative Region shall be State property. The Government of the Hong Kong Special Administrative Region shall be responsible for their management, use and development and for their lease or grant to individuals, legal persons or organizations for use or development. The revenues derived therefrom shall be exclusively at the disposal of the government of the Region". The Chief Executive of the Hong Kong Special Administrative Region Government has delegated to the Director of Lands the power to lease or grant land and to execute such lease or land grant.

3.2 The Director of Lands heads the Lands Department, which comprises the Lands Administration Office, the Legal Advisory and Conveyancing Office, and the Survey and Mapping Office.

Lands Administration Office

3.3 The Lands Administration Office of the Lands Department consists of the headquarters, 12 District Lands Offices and various specialist sections. Its main functions include:

- (a) acquiring and making land available for the Government's development programmes;
- (b) disposing of government land through land sales to the public, and private treaty grants to approved bodies for specified uses;
- (c) extending government leases and modifying conditions in existing leases;
- (d) ensuring that the use of private land complies with the lease conditions; and
- (e) managing vacant government land to prevent unlawful occupation or dumping.

Land grant policy

3.4 On 15 July 1997, the Executive Council endorsed various provisions covering land leases and related matters under the Hong Kong Special Administrative Region Government. These include policies governing the granting and renewal of land leases by the Hong Kong Special Administrative Region Government.

3.5 New leases of land shall be granted for a term of 50 years from the date of grant (except new special purpose leases for recreational purposes and petrol filling stations, new special purpose leases covered by franchises or operating licences and short term tenancies) at premium, and subject to payment from the date of grant of an annual rent equivalent to 3% of the rateable value of the property at that date, adjusted in step with any changes in the rateable value thereafter.

3.6 New special purpose leases for recreational purposes and petrol filling station will be granted for a term of 21 years from the date of grant. New special purpose leases covered by franchises or operating licences will normally be for a term commensurate with that of the associated franchise or licence. Short term tenancies shall continue to be granted for a term not exceeding 7 years.

3.7 Modifications, whether by modification letters or conditions of exchange, shall continue to be granted at premium reflecting the difference between the "before" and "after" land value. For modifications not involving boundary adjustments and thus conducted by modification letters, the existing lease term and provisions for annual rent will remain unchanged. For modifications conducted by conditions of exchange, the new lease term and rent shall be 50 years from the date of re-grant and 3% rateable value as provided for the new leases mentioned in paragraph 3.5 above.

3.8 Non-renewable leases (i.e. those fixed term leases containing no right of renewal), may, upon expiry, be extended for a term of 50 years without payment of an additional premium but subject to payment of an annual rent from the date of extension at 3% rateable value as for the new leases mentioned in paragraph 3.5 above. The extension of such leases is wholly at the discretion of the Hong Kong Special Administrative Region Government. For instance, if the land is required for a public purpose or is no longer being used for the purpose for which it was originally granted, then the lease is unlikely to be extended.

3.9 In the case of special purpose leases (broadly defined as leases containing a total prohibition against assignment), upon their expiry, and provided that the land is being used for the specified purposes and is not required for a public purpose, then they may, at the sole discretion of the Hong Kong Special Administrative Region Government, be extended for a term of 50 years without payment of a premium but subject to payment of an annual rent of 3% of rateable value as in the case of new leases.

3.10 According to the Lands Department, applications for lease renewal of single-owned and multi-owned lots are handled by its District Lands Office and the Estate Management Section respectively. It would normally take about 12-18 months to process a case of single-owned lots. For multi-owned lots, they are more complicated and the time taken would vary according to the individual circumstances of each case.

Land supply strategy

3.11 It has been the Government's policy to provide adequate supply of land to meet market demand and facilitate infrastructure development. In recent years, the Government has included the following policy objectives and guiding principles in its land supply strategy:

- (a) upholding the economic philosophy of letting market forces thrive, with minimum government intervention;
- (b) providing a steady supply of land to ensure the continuation of a fair and stable environment for the free and efficient operation of the property market and to meet the market demand for community development in a timely manner; and
- (c) safeguarding public revenue through the policy of not selling land cheap and ensuring that the land goes to the highest bidder at a price which reflects the prevailing market value of the land concerned.³

Sources of land supply

3.12 There are two main sources of land supply in Hong Kong. Government land is supplied through land auctions, public tenders⁴ or private treaty grants. Land is also available from the private sector.⁵ Property developers can re-develop their own land through lease modifications and land exchanges, or acquire land for development from other private land owners in the open market.

Land auctions/public tenders

3.13 Before 1999, the disposal of government land was primarily governed by the annual Land Sale Programme, a date-specific programme comprising a timetable of specific sites to be put up for scheduled auctions and tenders. In 1999, the Government supplemented the Land Sale Programme with an Application List system, which has since instituted a market-led mechanism in the sale of government land.

³ See Housing, Planning and Lands Bureau (2005b).

⁴ While the disposal of government land for private development can be conducted through public auctions, sales by public tenders are also adopted in certain circumstances, such as petrol-filling station sites, or where the development conditions are so complex that developers are given time to design a scheme and then make a bid through the tender process. See Nissim (1998).

⁵ According to the Lands Department, the split between government land and the private land in Hong Kong is about 81%:19%.

3.14 In a nutshell, the Application List comprises sites available for sale upon application by property developers. A developer interested in any of the sites on the Application List has to submit an application to the Lands Department together with a guaranteed bid price for the site. If the guaranteed bid is acceptable to the Government, the site would be put up for auction or open tender. The above arrangements allow property developers to decide the timing and quantity of land to be put on sale in a flexible manner. As such, *"the Government will not be able to over-load the market intentionally or unintentionally with excess land supply, particularly those large and expensive sites"*.⁶

3.15 On 13 November 2002, the Government announced a package of measures to restore public confidence in the property market, which had been on the decline since the Asian financial crisis. These measures included, among other things, stopping all scheduled land auctions and suspending the Application List system until the end of 2003. After the moratorium, the supply of new land could only come from the Application List system. On 15 October 2003, amid initial signs of a rebound in the property market, the Government decided to resume the Application List system from January 2004. Three land auctions, triggered through the Application List system, were held during 2004, with five residential sites totalling 5.9 hectares being sold.

Measures to smooth operation of the Application List system

3.16 On 4 March 2005, the Government announced the 2005/2006 Application List together with several measures to enhance the efficiency and transparency of the operation of the Application List system. These measures included:

- (a) shortening the time required in bringing a triggered site to auction from around 10 weeks to seven weeks;
- (b) simplifying the deposit requirement by applying a simple rate of 10% of the bid price submitted by the applicant, with the deposit being capped at HK\$50 million⁷; and
- (c) publishing the number of unsuccessful applications on the Lands Department's website on a monthly and site-specific basis.

⁶ See Hong Kong Special Administrative Region Government (2002).

⁷ Previously, the Lands Department determined the deposit requirement for each of the sites listed in the Application List.

3.17 After the announcement of the above enhancement measures, developers responded by submitting four applications to trigger two sites from the Application List during March-May 2005, but all to no avail. The guaranteed bids offered by developers fell short of the Open Market Value assessed by the Government for the sites concerned.⁸ According to the Government, the continued lack of successful triggers would affect the public's perception of its commitment of providing adequate and timely supply of land to meet market demand, and this might put unduly upward pressures on property prices.⁹ As such, the Lands Department announced a new measure on 21 June 2005 to ease the triggering requirement under the Application List system.

3.18 Under the new measure, a guaranteed bid from the applicant reaching at least 80% of the Government's assessed Open Market Value will be accepted as a trigger to initiate an auction or a tender.¹⁰ However, the site would not be sold unless the highest bid received from auction or tender meets or exceeds an undisclosed reserve price assessed on the day of auction/close of tender. After the announcement of the modified triggering requirement, three sites were successfully triggered from the Application List for public sale and auctioned off in September 2005.

Procedures for land sale under the modified Application List system

3.19 Appendix I presents a flowchart describing the procedure for land sale under the modified Application List system. A developer interested in applying for the sale of any site on the Application List must submit the following to the Lands Department:

- (a) an application indicating the "minimum price" the developer is prepared to bid;
- (b) a cheque or cashier order for the payment of the required amount of deposit; and
- (c) a signed/sealed Agreement for Auction or Tender Cases.¹¹

⁸ The Open Market Value is the amount which the land, if sold in the open market by a willing seller, might reasonably be expected to realize. See Legislative Council Secretariat (2001).

⁹ See Housing, Planning and Lands Bureau (2005b).

¹⁰ Previously, a site would be triggered for sale only when the guarantee bid met the full Open Market Value assessed by the Government.

¹¹ The Agreement for Auction or Tender Cases is a contract to be signed between the applicant and the Government. The Agreement sets out the general terms and conditions governing the auction/tender of a site on the Application List. It stipulates, among other things, the arrangement of the deposit put down by the applicant concerned to trigger an auction or a tender. If the applicant is successful in acquiring the site, the deposit will be used as part of the premium. If he/she is unsuccessful, the deposit will be refunded. However, if there is no bid in an amount equivalent to or more than the minimum price, the deposit will be forfeited.

3.20 Upon receipt of the application, the Lands Department will, usually within two weeks, inform the applicant of whether the "minimum price" is acceptable. If the "minimum price" is not acceptable, the cheque or cashier order will be returned without interest to the developer and no further action will be taken on the application.

3.21 The Lands Department will sign and date the Agreement for Auction or Tender Cases if the "minimum price" offered by the applicant is acceptable. It will then write to the applicant, enclosing a copy of the executed 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. The Lands Department will also advertise the details of auction/tender in the media and the Government Gazette.

Private treaty grants

3.22 While government land can be disposed of by way of public auctions or tenders, land may be made available by private treaty grants in certain cases. Examples include land granted to essential public utility services and non-profit-making educational, medical and charitable institutions for operating schools, hospitals, and social welfare and other community facilities. Private treaty grants have also been made to the Urban Renewal Authority for agreed projects, and to the Kowloon-Canton Railway Corporation, the Airport Authority and the MTR Corporation Limited for residential and/or commercial developments.

3.23 The level of land premium charged on a direct land grant depends on the uses of the land. For example, nominal or concessionary premium is normally charged for community uses because of their non-profit-making nature, while full market premium is charged for commercial land uses (like power station).

Disposal of government land by types of transactions

3.24 As mentioned above, the disposal of government land can be conducted through auctions, tenders or private treaty grants. As shown in Table 2, land disposal by private treaty grants accounted for a large proportion of the total disposed area between 1996/1997 and 2004/2005. This was particularly the case in 2000/2001 when private treaty grants accounted for 90% or 270 hectares of the total disposed area. During that year, the Government granted 125 hectares of land for the development of the Hong Kong Disneyland project.

Table 2 — Disposal of government land by types of transactions

Year	Auctions/tenders		Private treaty grants		Total land area
	Area (hectares)	% of total	Area (hectares)	% of total	hectares
1996/1997	84.6	41	120.6	59	205.2
1997/1998	36.2	23	120.3	77	156.5
1998/1999	24.9	11	200.7	89	225.6
1999/2000	22.0	17	104.1	83	126.1
2000/2001	28.8	10	269.6	90	298.4
2001/2002	8.6	13	55.5	87	64.1
2002/2003	5.4	9	53.1	91	58.5
2003/2004	2.7	13	18.8	87	21.5
2004/2005	7.0	16	35.7	84	42.7

Source: Lands Department.

Land exchanges and lease modifications

3.25 Virtually all private land in Hong Kong is held on a leasehold basis, under which the lease serves as a contract between the Government and the lessee (i.e. land owner).

3.26 Land leases stipulate the obligations and duties of the land owners, and the planning, engineering and development requirements that need to be met. Under the current land administration policy, land owners can apply to the Lands Department to modify existing lease conditions for a more intensive or different type of development in accordance with the prevailing town planning requirements.¹² A premium equivalent to the difference in land value between the development permitted under the existing lease conditions and that permissible under the new lease terms is payable for any lease modification granted.

¹² According to the Hong Kong Institute of Surveyors (2003), "[t]he Town Planning Board may amend the town planning zoning from time to time in response to socio-economic changes and new town planning standards. Very often this results in a more relaxed development conditions stipulated in planning requirements than those in the lease and a possible redevelopment potential for the [land] owners."

3.27 Development can also be permitted by way of land exchanges, whereby a land owner can surrender an existing land in exchange for the grant of a new site, normally in-situ¹³, in which current conditions apply so that development will meet up-to-date planning requirements. A premium is charged on the land owner to reflect the additional value (if any) of the land granted over the land surrendered.

3.28 The number of approved applications for lease modifications/land exchanges has generally been on the decline since 1997/1998. In 2004/2005, the Government approved 124 applications for lease modifications/land exchanges, with 46 for residential, 37 for residential-cum-commercial development, 14 for commercial development, nine for government, education and community facilities, seven for industrial development, and the remaining 11 for other purposes.

Table 3 — Number of approved cases of lease modifications/land exchanges

Fiscal year	Lease modifications	Land exchanges	Total
1996/1997	237	93	330
1997/1998	291	56	347
1998/1999	235	18	253
1999/2000	199	38	237
2000/2001	148	23	171
2001/2002	178	42	220
2002/2003	144	17	161
2003/2004	136	17	153
2004/2005	91	33	124

Source: Lands Department.

¹³ There are two categories of land exchanges, namely in-situ and non-in-situ land exchanges. For in-situ land exchanges, a portion of land to be surrendered must physically overlap the land that will form part of the new lot granted by the Government. In non-in-situ exchanges, the land surrendered does not need to overlap with the land to be granted. See Nissim (1998).

3.29 The Subgroup on Business Facilitation, under the Economic and Employment Council¹⁴, has conducted studies on the ways to simplify lease conditions for land grants, improve the lease modification mechanism¹⁵, streamline town planning processes, rationalize the regulatory regime and shorten planning cycles for development projects. The Subgroup has discussed its studies with the relevant government departments (such as the Lands Department and the Planning Department) which have reached a consensus on some measures to simplify the lease conditions and improve the lease modification mechanism.¹⁶

Procedure for lease modifications and land exchanges

3.30 Appendices II and III outline the procedures for processing lease modifications and land exchanges respectively. When processing an application for land exchange/lease modification, the Lands Department will seek views and comments from the relevant government departments. After consolidation of comments, the Lands Department will hold an internal conference to discuss whether to accept or reject the application. If approved, the applicant will be informed of the decision and the provisional basic terms (including the premium) proposed by the Lands Department for the lease modification/land exchange. The Lands Department will offer the formal basic terms to the applicant for consideration if he/she agrees to the provisional basic terms. The applicant is required to advise whether he/she accepts the offer within one month.

Land assembly for re-development

3.31 For private developers, land assembly for re-development can be a lengthy process in view of the possible problems arising from defective titles, untraceable owners, or existing owners demanding unreasonably high prices or refusing outright to sell for personal reasons. In 1999, the Government enacted the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) to help property developers overcome land assembly difficulties in urban renewal projects. The Ordinance provides for a person, who owns substantial shares (not less than 90%) in a lot, to apply to the Lands Tribunal for a compulsory sale of the whole lot by public auction for the purpose of re-development. As such, the Ordinance allows the majority owner the opportunity to acquire the minority interest in the lot and unify the ownership accordingly.

¹⁴ In January 2004, the Financial Secretary established the Economic and Employment Council to advise him on the development and implementation of policies and initiatives to promote economic activities, encourage inward investment, facilitate business development, and engender employment opportunities.

¹⁵ The Hong Kong Institute of Surveyors has urged the Government to overhaul the land premium assessment mechanism in order to speed up land premium negotiation and redevelopment in urban renewal projects. See Hong Kong Institute of Surveyors (2003).

¹⁶ See Economic and Employment Council (2005).

3.32 Recently, there are calls for a review of the Ordinance amid the small number of successful cases in applying for the order for sale from the Lands Tribunal.¹⁷ The Housing, Planning and Lands Bureau recently commenced a consultation on 8 March 2006 to solicit views on the proposals to lower the compulsory sale threshold for three specified classes of lot under the Ordinance, with the aim of facilitating private redevelopment. According to the consultation paper, it is proposed to subject the following three classes of lots to a threshold of not less than 80% when applying for a compulsory sale:

- (a) a lot with "all units but one " acquired;
- (b) a lot with building(s) aged 40 years or above; and
- (c) a lot with missing/untraceable owners/untraceable owners (with the number of missing/untraceable owners accounting for at least 10% of undivided shares of the lot).

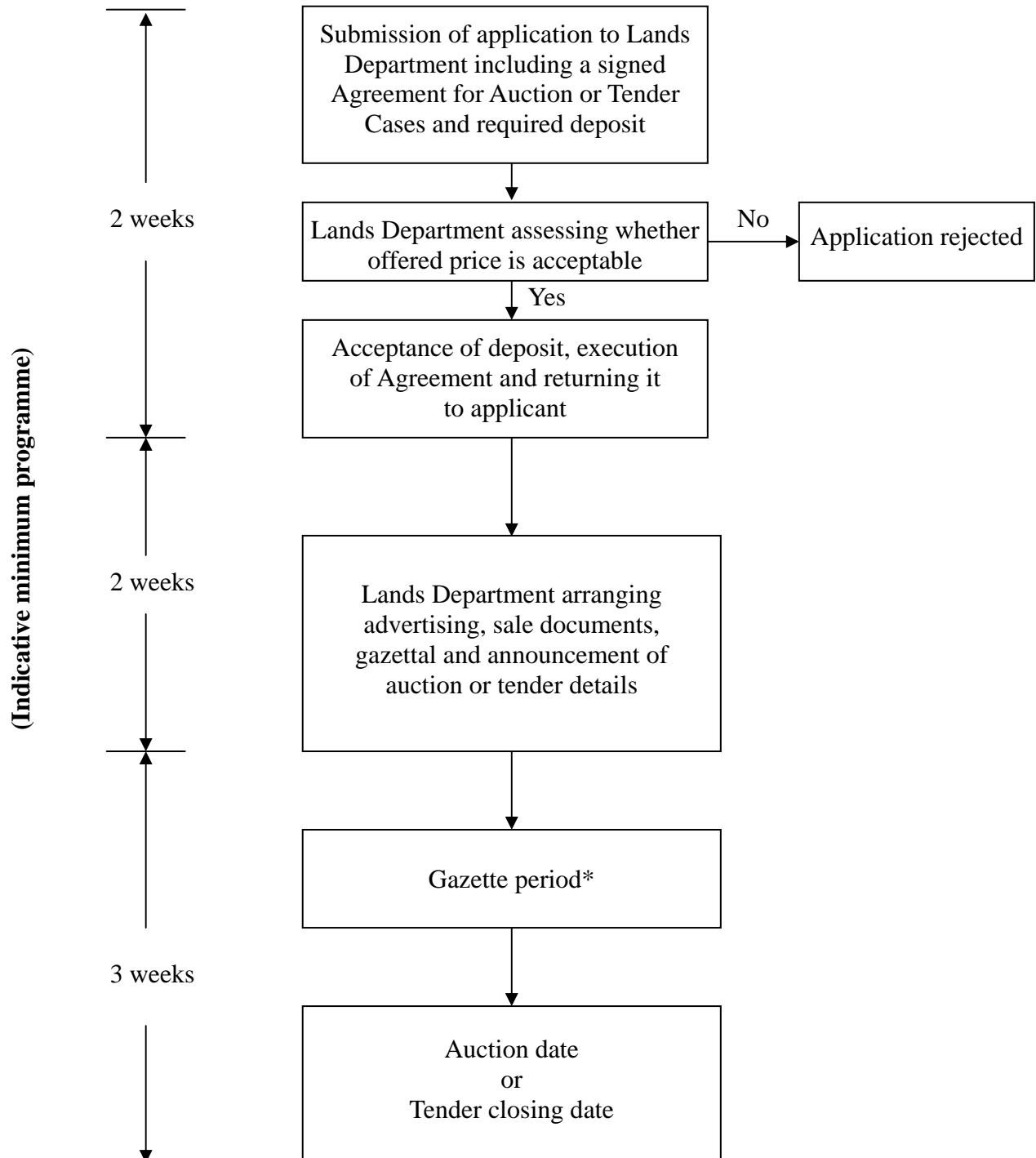
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¹⁷ See Hong Kong Institute of Surveyors (2005).

Appendix I

Procedure for land sale under the modified Application List system

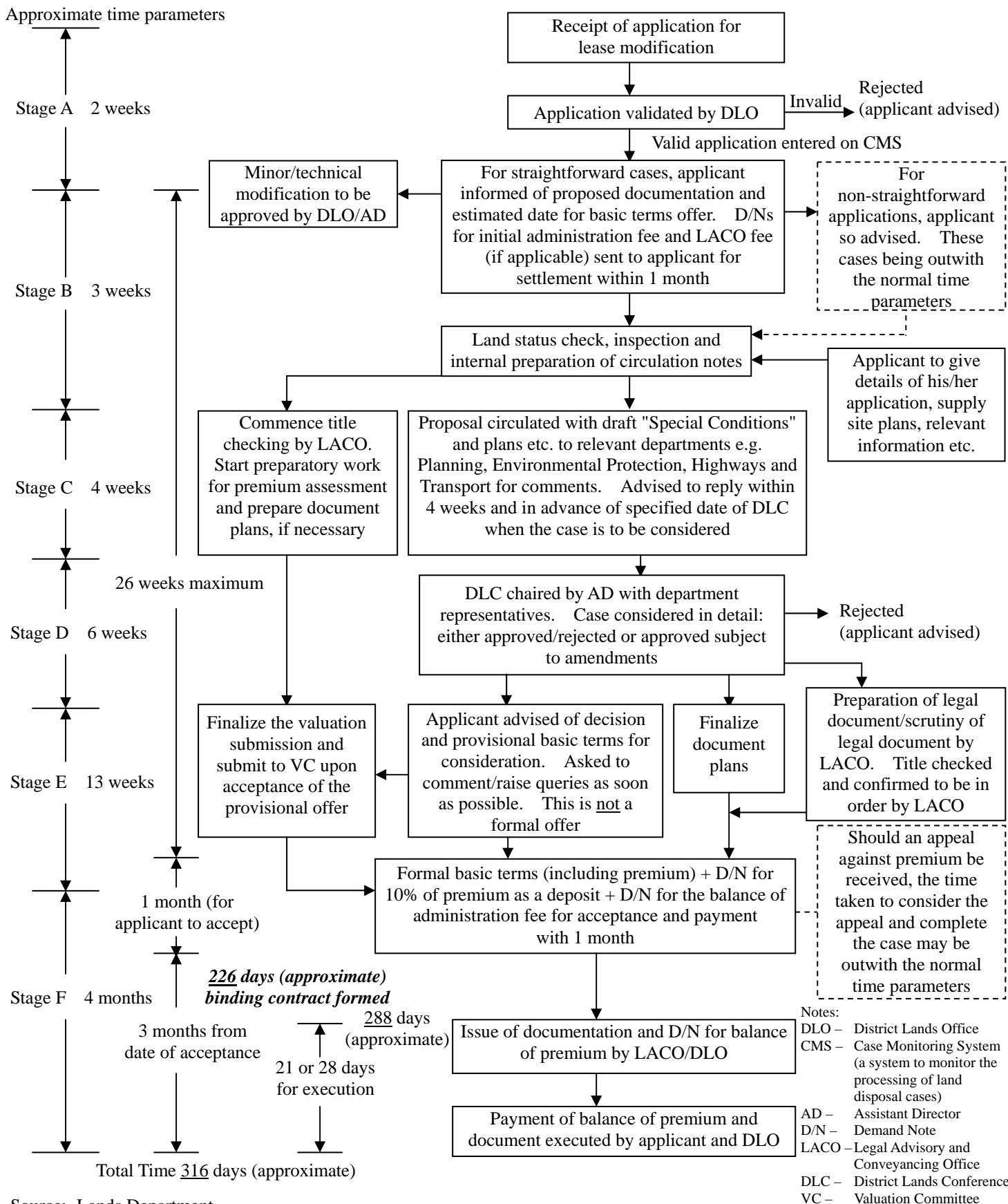


*(two consecutive weeks)

Source: Lands Department.

Appendix II

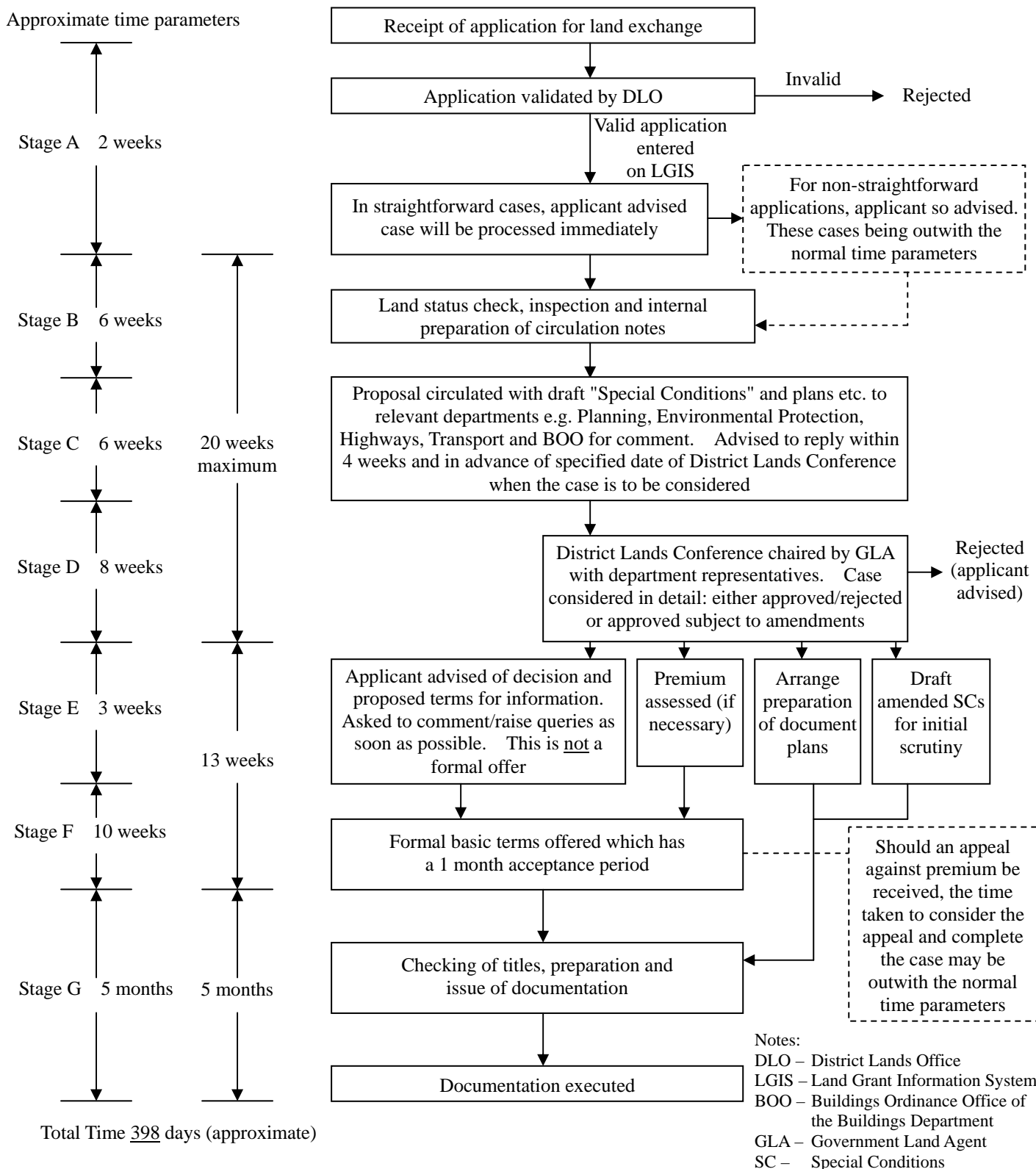
Processing of lease modifications by District Lands Offices



Source: Lands Department.

Appendix III

Processing of land exchanges by District Lands Offices



Source: Lands Department.

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