

香港特別行政區政府
The Government of the Hong Kong Special Administrative Region

房屋及規劃地政局
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29 September 2005

Clerk to LegCo Panel on Housing
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong
(Attn: Miss Becky Yu)

Dear Miss Yu,

**Divestment of the Housing Authority's
Retail and Carparking Facilities**

In response to the concern raised by a Panel Member about the treatment of proceeds from the divestment of the Housing Authority's retail and carparking facilities, I enclose an information paper explaining the basis of the Government's decision. Grateful if you would arrange its circulation to Panel Members. Many thanks.

Yours sincerely,

(Miss Joey Lam)
for Secretary for Housing, Planning and Lands

Legislative Council Panel on Housing

Divestment of Housing Authority's Retail and Car-parking Facilities : Treatment of Proceeds from Divestment

Purpose

This paper explains the basis of the Government's decision to allow the Housing Authority (HA) to retain the proceeds from the divestment of its retail and car-parking (RC) facilities.

Background

2. Under the current financial arrangements between the Government and HA (the Financial Arrangements), the value of land for the non-domestic portion of public rental housing estates and Home Ownership Scheme (HOS) courts is treated as Government's contribution to non-domestic equity in HA. In return for this contribution, the Government receives 50% of the net operating surplus generated from HA's non-domestic operation every year. After the divestment, the Government's receipt in this respect will be reduced to the extent that a majority of HA's non-domestic properties will have been divested.

3. The Financial Arrangements do not provide for the sharing, between the Government and HA, of the proceeds of sale of any parts of the non-domestic portion of the public housing rental estates and HOS courts. The divestment was not contemplated by the Government or HA at the time when they first entered into the Financial Arrangements in 1988 or when the Financial Arrangements were amended by a supplemental agreement in 1994. Indeed, before the decision on the divestment was made in 2003, most of the land on which the RC facilities are located either were vested in HA by the Government (i.e. HA did not own the title of the land), or where the land had already been granted to HA, the land leases concerned contained non-assignment clauses applicable to the RC facilities.

4. Although the Government has a financial stake in HA's non-domestic operation, the Government has agreed¹ –

¹ See Legislative Council Brief issued in July 2003 and entitled 'Divestment of Housing Authority's Retail and Car-parking Facilities'.

- (a) to grant the land on which the RC facilities are located by way of leases at nominal premium, with provisions made for allowing the assignment of the RC facilities at nil premium to the new owner upon divestment;
- (b) where leases have already been granted to HA, to allow HA to assign the RC facilities to the new owner at nil premium; and
- (c) to allow HA to retain the proceeds from the divestment and to apply them to meet HA's cash deficit in financing the construction of public rental housing estates.

5. In the judgement dated 20 July 2005 of the Court of Final Appeal (CFA) on the appeal by Madam Lo Siu-lan², the Chief Justice noted that “on (d)ivestment, (HA) would retain all the proceeds of sale and Government would in effect be injecting its entitlement into (HA)”. One Legislative Council (LegCo) member has raised the question as to whether such ‘injection’ will require the approval of the Finance Committee of LegCo.

Divestment proceeds

6. While the Government is entitled under the Financial Arrangements to receive 50% of the net surplus from the operation of HA's RC facilities, HA is not contractually obliged to pay 50% of the divestment proceeds, or indeed any proportion of the proceeds, to the Government. This is because ‘net surplus from the operation of the RC facilities’ does not cover proceeds from selling those facilities.

7. On the other hand, when consenting to the divestment of the RC facilities, the Government has recognised that it will not receive any future income stream equivalent to 50% of the net operating surplus from the RC facilities annually, to which it would be entitled if those facilities are not divested. The Government has also agreed to take the land-related measures as outlined in paragraph 4(a) and (b) above to enable HA to implement the

² In December 2004, Madam Lo and one other person applied for judicial review challenging the legality of HA's decision to sell the RC facilities. The Court of First Instance refused their application and the Court of Appeal dismissed Madam Lo's subsequent appeal. In July 2005, after hearing Madam Lo's final appeal, CFA dismissed it.

divestment. To this extent, it would not be unreasonable for the Government, if it so decides, to ask HA to pay a portion of the divestment proceeds to the Government. This can be effected, for example, through mutual agreement between the Government and HA, or, if necessary, by the Chief Executive exercising his power under section 9 of the Housing Ordinance³.

8. However, the Government has made a policy decision to allow HA to retain the divestment proceeds, in view of HA's cash deficit difficulties resulting from the cessation of the HOS, on whose sale revenues it had become heavily dependent. HA will use the proceeds principally to finance the construction of public housing estates.

9. Viewing from the perspective as outlined in paragraphs 7 and 8 above, one may argue that the Government would be effectively 'injecting its entitlement', as it were, into HA to enable HA to continue to build public housing for people in need. It should be noted that such 'injection' is grounded essentially on the land-related measures outlined in paragraph 4(a) and (b) above and it does not involve any expenditure incurred or to be incurred that requires approval of the Finance Committee of LegCo under the Public Finance Ordinance (Cap 2).

10. The Government's policy decision not to ask HA to pay to it any of the divestment proceeds does not entail any appropriation from the general revenue and therefore does not require the approval of the Finance Committee of LegCo under the Public Finance Ordinance.

Housing, Planning and Lands Bureau
September 2005

³ Section 9 of the Housing Ordinance provides that the Chief Executive may give such directions to HA as he thinks fit with respect to the exercise or performance by HA of any power, functions or duties under the Ordinance, including disposal of any property.