

立法會
Legislative Council

LC Paper No. CB(1)1179/05-06(05)

Ref: CB1/PL/FA

Panel on Financial Affairs
Meeting on 3 April 2006

Background Brief
on the conflict of interest issue and other financial issues
involved in and after the listing of The Link Real Estate Investment Trust

Purpose

This paper sets out the background of the listing of The Link Real Estate Investment Trust (The Link REIT), and the conflict of interest issue and other financial issues involved in and after its listing. It also summarizes the major views and concerns expressed by Members at the special meeting of the Panel on Financial Affairs (FA Panel) on 14 December 2005 and the Legislative Council (LegCo) meeting on 8 March 2006.

Divestment of the retail and car-parking (RC) facilities of Housing Authority (HA)

2. Divestment of the RC facilities of HA was first mooted by a consultant commissioned by HA in 2000, with the objective of enabling HA to focus its resources on its core function as a provider of subsidized public housing in Hong Kong. The objective was in line with the direction provided in the Report on the Review of the Institutional Framework for Public Housing published in June 2002, which recommended that HA should progressively divest its non-core assets, i.e. the commercial portfolio (RC facilities).

3. In July 2002, HA appointed a consultant to study various options for the divestment and recommend the way forward. Based on the findings of the consultancy study, the Administration submitted a divestment proposal to the Chief Executive in Council for consideration on 15 July 2003. The Chief Executive in Council decided that the Government should seek HA's agreement in principle to divest its RC facilities, and that the net proceeds from the divestment in principle should entirely go to HA to meet its budget deficit for the short term. On 24 July 2003, HA agreed in principle to divest its RC facilities, and approved, inter alia, the establishment of the Supervisory Group on Divestment to monitor and steer the divestment project and the appointment of

Global Coordinators and other necessary advisers and consultants assisting in the implementation of the project.

4. HA then implemented the divestment project through the establishment of a Real Estate Investment Trust¹ (REIT), i.e. The Link REIT. In this connection, The Link Management Limited (The Link) was incorporated in February 2004 as a HA wholly owned subsidiary, and it assumed in March 2005 the management functions for the 180 RC facilities to be divested by HA.

5. The Panel on Housing was first briefed on the divestment project on 3 November 2003, after HA had agreed in principle to divest its RC facilities. At that meeting and subsequent meetings of the Panel, some members expressed reservations about and stated opposition to the divestment project. Their major concerns are summarized in **Appendix I**.

Listing of The Link REIT

6. In November 2004, The Link announced the listing arrangements and published the Offering Circular for the Initial Public Offering (IPO) of The Link REIT. On 8 December 2004, one day before the closing of the public offering period, two public rental housing tenants filed an application for judicial review of HA's statutory power to divest its assets. Given that the judicial review could not reach finality² before the scheduled listing date of The Link REIT, HA announced on 20 December 2004 its decision to postpone the listing.

7. On 20 July 2005, the Court of Final Appeal (CFA) ruled that HA plainly had the power to divest its RC facilities. HA then announced on 6 September 2005 the decision to re-launch the global offering of units in The Link REIT. On 14 November 2005, an Offering Circular for the re-launched IPO was issued. The Link REIT was subsequently listed on 25 November 2005.

Regulatory framework and disclosure requirements for the Link REIT

Regulatory framework

8. The Link REIT is a unit trust authorized by the Securities and Futures Commission (SFC) under section 104 of the Securities and Futures Ordinance (SFO) (Cap. 571) and regulated by the provisions of the REIT Code. The principal assets of The Link REIT are the 180 RC facilities divested by HA,

¹ According to the Code on Real Estate Investment Trusts (REIT Code) issued by the Securities and Futures Commission (SFC) in June 2005, a REIT is a collective investment scheme constituted as a trust that invests primarily in real estate with the aim to provide returns to holders derived from the rental income of the real estate. Funds obtained by a REIT from the sale of units in the REIT are used in accordance with the constitutive documents to maintain, manage and acquire real estate within its portfolio.

² The Court of First Instance dismissed the judicial review application on 14 December 2004. The Court of Appeal dismissed the appeal of Madam LO Siu-lan (one of the two applicants for judicial review) on 16 December 2004. Madam LO had the right to apply for leave to appeal to CFA within a specified period which extended beyond the deadline date for the listing of the Link REIT.

which are held on trust by the Trustee of The Link REIT – HSBC Institutional Trust Services (Asia) Ltd – on behalf of unit-holders of The Link REIT. The Trustee has a duty to exercise due diligence and vigilance in protecting the rights and interests of unit-holders.

9. The Link is the Manager of The Link REIT. Functionally independent of the Trustee, The Link is licensed by SFC to manage the assets of The Link REIT for the benefit of unit-holders as required by the REIT Code.

Disclosure requirements in and after the publication of the Offering Circular

10. Where the IPO for The Link REIT is concerned, any information which may be necessary for investors to make an informed judgment is to be disclosed in the Offering Circular. In addition, material information known after the publication of the Offering Circular must be disclosed by public announcement or where appropriate by the publication of a supplementary Offering Circular.

11. The Link is required by the REIT Code to ensure that public announcements of material information and developments with respect to The Link REIT will be made on a timely basis in order to keep unit-holders apprised of the position of The Link REIT. In this connection, The Link has set up a Disclosures Committee under the Board of Directors to review matters relating to regular, urgent, and forward-looking disclosure of information, and to oversee the continuity, accuracy, clarity, completeness and currency of the information disseminated.

Declaration of interest requirements

12. According to The Link's Compliance Manual which has been reviewed by SFC, Directors of the Board are required to inform the Board of any interest they may have in relation to a matter being considered and, where a potential or perceived conflict of interest situation arises, they may be excluded from relevant meetings. Directors are also required to inform The Link of their directorships with other companies and their holdings in The Link REIT.

Disclosure requirements for significant holders of The Link REIT

13. Under the Trust Deed of The Link REIT, a person having an interest in 10% or more of all the units in issue is a "significant holder", and is required to notify the Trustee and the Manager of The Link REIT within three business days next following the acquisition of such interest and of every subsequent change in unit-holding by a whole percentage point above such threshold. However, in response to market developments in late 2005 concerning substantial acquisitions of REITs and the call for enhancing the transparency of shareholding interests of REIT units, SFC reviewed the situation and decided to adopt the 5% disclosure threshold for listed companies under the SFO for REITs. The new disclosure threshold would apply to existing listed REITs and new REITs to be listed on the Stock Exchange of Hong Kong (SEHK). Details of the new disclosure requirement are set out in paragraph 20 below.

Limiting the ability of significant holders from controlling The Link REIT

14. The REIT Code and/or the Trust Deed of The Link REIT provide the following features that may limit the ability of significant holders from controlling The Link REIT to their advantage beyond what is realized by unit-holders generally:

- (a) The Link REIT's key business must be to invest in real estate which will generally produce sustainable income. It cannot engage in property development or speculative investments. If The Link REIT wishes to sell a property within two years of its acquisition, the sale must be approved at a general meeting of unit-holders by a special resolution³;
- (b) No unit-holder has a right to require that any assets of The Link REIT be transferred to him. A significant holder and its related parties are prohibited from voting their units or being part of a quorum for any meeting of unit-holders convened to approve any matter in which the significant holder has a material interest in the business to be conducted;
- (c) If The Link REIT is terminated, its real estate assets must be disposed of under the oversight of the Trustee by either public auction or open tender. Proceeds from the disposal will then be distributed to all unit-holders according to provisions of the Trust Deed;
- (d) There is no provision which compels minority unit-holders to sell their units to any significant unit-holder;
- (e) Under the REIT Code, the Manager is required to distribute to unit-holders as dividends each year at least 90% of the audited annual net income after tax of The Link REIT; and
- (f) The gearing ratio of The Link REIT cannot exceed 45% of its gross asset value.

Conflict of interest issue and other financial issues

15. Given that there were abnormal price movements on The Link REIT arising from continuous acquisition of substantial units by hedge funds in November 2005, concern was raised that joint actions might be taken by some significant holders to replace the Board of Directors of The Link or to control the Link REIT to their advantage. In this connection, it was reported on the media that apart from hedge funds, Deutsche Bank also acquired substantial units of

³ The passing of a special resolution requires a quorum of two or more unit-holders holding at least 25% of all units in issue.

The Link REIT (5.05% as at early December 2005) and that Mr Paul CHENG, who was appointed as the Chairman of the Board of Directors of The Link on 1 April 2005, was appointed by Deutsche Bank as a Senior Advisor to its Asia Pacific Regional Advisory Board on the same day. However, Mr CHENG's advisory role with Deutsche Bank was not included in the Offering Circular for the IPO of The Link REIT published on 14 November 2005. Concern was therefore raised about the issue of possible conflict of interest between Mr CHENG's two roles, and whether Mr CHENG had complied with the disclosure requirements.

16. To address the above concerns, a special meeting of the FA Panel was held on 14 December 2005 to discuss the conflict of interest issue and other financial issues related to the listing of The Link REIT. In response to the Panel's invitation, Mr Paul CHENG indicated in his reply dated 12 December 2005 that due to short notice and his prior commitment in China, he was unable to attend the meeting.

17. In brief, Members raised questions on the following issues:

- (a) Possible conflict of interest between Mr Paul CHENG's two roles;
- (b) Non-disclosure of Mr CHENG's advisory role with Deutsche Bank in the Offering Circular for the IPO of The Link REIT;
- (c) Non-disclosure of Mr CHENG's advisory role with Deutsche Bank during the meeting on 19 November 2005 to decide the pricing and allocations to investors for the Link REIT IPO;
- (d) Review of disclosure requirements for significant holders of The Link REIT; and
- (e) Government policy on asset divestment.

18. Members' major views and concerns are set out in the minutes of the special meeting of the FA Panel on 14 December 2005 in **Appendix II**, and the list of questions raised by Members issued vide LC Paper No. CB(1)1152/05-06(01). The written responses provided by Mr Paul CHENG, Housing, Planning and Lands Bureau, and SFC were issued vide LC Paper Nos. CB(1)1152/05-06(02), CB(1)1179/05-06(03) and CB(1)1179/05-06(04) respectively.

19. To enable Members to further discuss the conflict of interest issue and other financial issues involved in and after the listing of the Link REIT, the FA Panel decided that the subject be scheduled for discussion at its meeting to be held on 3 April 2006.

Recent developments

20. On 15 December 2005, SFC announced that in view of the recent developments in the market concerning substantial acquisitions of units in SFC-authorized REITs and widespread market interest in information about substantial interests in REIT units, it had revised its policy about notification of interests in REITs. As a result, holders of REIT units are required to submit to the relevant REIT Manager and SEHK notifications of interests upon the attainment of the 5% disclosure threshold and other changes thereto in accordance with the provisions of the relevant trust deed. In order to enhance transparency of and public access to information regarding interests in REIT units and to promote orderly trading in the market, such notifications received by SEHK will be posted on its website, in the same manner as the disclosure of interests in shares of listed companies. On 16 January 2006, The Link announced that it would adopt, with effect from 16 February 2006, the new disclosure of interest regime in line with that applying to other REITs listed on SEHK.

21. On 11 January 2006, Mr Paul CHENG announced that he would not renew his advisory position with Deutsche Bank upon expiry of the current term on 31 March 2006.

22. On 21 February 2006, in response to media reports on the same day regarding The Link REIT's plan to acquire further properties from HA, The Link made an announcement clarifying that at present there was no negotiation or concrete plan for the acquisition of further properties by way of issuance of new units or otherwise from HA as reported by the media. The Link also clarified that it was not aware of any reasons for the recent increase in the price of the units of The Link REIT, and that there were no negotiations or agreements relating to intended acquisitions, realizations or other matters which were discloseable under Chapter 10.4 of the REIT Code, and it was not aware of any matter discloseable under the general obligation imposed by Chapter 10.3 of the REIT Code, which was or might be of price-sensitive nature. Chapter 10.3 and 10.4 of the REIT Code is in **Appendix III**.

23. At the LegCo meeting on 8 March 2006, Hon Albert CHENG raised an oral question expressing concern about the listing arrangements for The Link REIT, in particular, whether there was any professional negligence on the part of the Joint Global Coordinators in determining the offer price for units of The Link REIT and whether public assets had been disposed of at a knock-down price. Concern was also raised on whether any measures were in place to prevent investors from divesting the assets of The Link REIT after gaining control of it. An extract from the draft Hansard is in **Appendix IV**.

References

24. A list of relevant papers is in **Appendix V**.

Council Business Division 1
Legislative Council Secretariat
31 March 2006

Members' major concerns expressed at meetings of the Panel on Housing

After HA had agreed in principle to divest its RC facilities, the Panel on Housing held a number of meetings to discuss the subject. Their major concerns are summarized below.

Impact on HA's financial situation

2. Noting that rental income from the RC facilities was a major source of recurrent income for HA, Panel members were concerned that HA would incur deficit in the long run after divestment of these facilities.

Impact on staff of the Housing Department

3. As the divestment would affect some 650 civil servants, ranging from professionals to front-line officers, currently managing or maintaining the RC facilities, concern was raised on the job security of staff, in particular contract staff in the Housing Department (HD). According to the Administration, a voluntary exit scheme (VES) would be introduced for those who wished to leave the civil service. VES would cover only the 646 departmental grade posts being identified to be surplus to requirement arising from the divestment. Any civil servants working in HD who were in the same ranks as these 646 posts would be eligible to apply, provided that they had more than five years' active service prior to normal retirement and were not subject to disciplinary proceedings. Members however remained concerned that the introduction of VES and redeployment of surplus staff might not resolve the problem. They urged the Administration to sort out measures to mitigate impact on the contract staff. According to the Administration, HD would redeploy surplus staff to other duties such as estate management, and there would not be any forced redundancy of civil servants arising from the divestment.

4. As regards members' concern about the impact of the divestment on contract staff, the Administration's explanation was that all possible measures had been considered to mitigate the impact. These included introducing more flexible contract terms to enable job sharing. A scheme had also been worked out to assist outgoing contract staff to better equip themselves for the job market through training, and to recommend them to prospective employers where appropriate. There had been some successful cases.

Impact on commercial tenants

5. Of equal concern to the Panel was the impact of the divestment on stakeholders, such as commercial tenants and service providers. At the Panel meeting on 5 July 2004, 10 deputations coming from the retail, catering, and medical sectors were invited to express views on the subject. Their main concerns included rent increase, security of tenure, continuity of letting/contracting policies, payment of

stamp duty, changes in trade mix as well as policies on name change and fire insurance, etc. In this connection, members considered that the new company should maintain dialogue with the commercial tenants to see how their concerns could be addressed, and that the Administration should play an active role in the process.

6. When the subject was discussed at the Panel meeting on 22 November 2004, members noted the following major requests raised by the Concern Group on Divestment of Housing Authority's Retail and Car-parking Facilities –

- (a) The Link Management Limited (The Link) should ensure existing tenants would have priority in renewing their tenancy agreements and be able to opt for contracts of three, six or nine years;
- (b) A transparent and reasonable rent adjustment mechanism linked to the consumer price index be established; and
- (c) An exit clause be included in the tenancy agreements to enable existing commercial tenants to terminate the agreements should they find difficulty in adopting to the new tenancy arrangements introduced after the listing of The Link REIT.

They called upon HA and The Link to seriously consider the above requests given that many existing lease conditions were not included in the tenancy agreements but governed by HA's tenancy policy, which might not be adopted by The Link having regard to its commercial nature. Some members held the view that HA should secure an undertaking from The Link to accede to the requests, bearing in mind that some of these commercial tenants were resettled to HA's commercial premises as part of the resettlement programme to re-provision shops in cottage areas displaced by previous clearance operations. Consideration should also be given to exempting existing commercial tenants from new arrangements, if any, to be introduced by The Link. According to the Administration, it would not be appropriate to impose any condition on how The Link should manage the RC facilities. Nevertheless, it undertook to convey members' requests and views to The Link for consideration. Not being convinced by the Administration's response, the Panel passed the following motion –

“That this Panel urges the Housing Authority (HA) and The Link Management Limited (The Link Management) to jointly discuss with the commercial tenants as soon as possible the specific transitional arrangements, including the tenancy policy, in concrete terms before the listing of the Real Estate Investment Trust, so as to ensure that the commercial tenants will not suffer a sharp increase in rent, or even be forced out of business as a result, thereby saving the residents from having to bear the adverse impact of rising prices; and that the HA should put the listing arrangements on hold until a consensus has been reached between The Link Management and the commercial tenants.”

7. When the subject was discussed at the Panel meeting on 20 October 2005, members expressed concern about the rent policy and the rent-setting mechanism of The Link. They considered it necessary for The Link to maintain dialogue with shop tenants to address their concerns about possible rental increases. The Chief Executive Officer of The Link said that rental increase was not the key point of The Link's business strategies as evidenced from the Offering Circular. The Link's primary focus would be on controlling operating costs and improving operational efficiency of the divested RC facilities as set out in the Offering Circular. The Link intended to implement various initiatives aimed at improving the overall commercial attractiveness of, and shopper traffic and tenants' sales at, the divested RC properties, which would in turn enhance their rental potential. Like any landlord, The Link would consider a variety of factors, such as the trades operated by the tenants, the market situation and the rental value of similar premises in the vicinity, when setting rent. The market mechanism would effectively point to any adjustments required to keep the rents at a reasonable level. The Link viewed the shop tenants as an important partner of its business and was keen to maintain communication with them. The Link would pro-actively approach the shop tenants to discuss tenancy renewal before the expiry of their tenancy agreements.

Operation and structure of the new company

8. Members had expressed the following concerns about the operation and structure of the new company –

- (a) There was a possibility of monopoly or oligarchy of the RC facilities by a limited number of big corporations which had sufficient financial strength to buy up all the shares of the new company;
- (b) If HA did not retain any share in the new company, it would not have any role to play in its management to ensure continuity of tenancy policy;
- (c) The new company should have a proper corporate structure to ensure that it would not be controlled by a few persons and the terms of its board of directors would not be extended indefinitely; and
- (d) After divestment, the RC facilities would be operated fully on a commercial basis. The new company would be more ready to increase rents and the burden of which would eventually be passed onto consumers in terms of higher prices for goods and services.

Transparency of the divestment exercise

9. Members stressed the need to enhance the transparency of the divestment exercise, which in their view was important to facilitate proper monitoring of the process and to assure the commercial tenants that their interest would not be compromised by the divestment. They however noted with disappointment that the

Administration was not able to disclose the listing details prior to publication of the relevant prospectus under the listing regulations.

Valuation of the retail and car-parking facilities

10. There were concerns that the RC facilities were sold at a low price at the expense of taxpayers' money. A member was sceptical that HA had deliberately under-estimated the full market value of the RC facilities in order to get a higher yield for investors. Another member cast doubt on the credibility of the valuation, which according to him, was conducted behind closed doors. The Administration's explanation was that according to legal advice, disclosure of the valuation details would be problematic in the light of local and overseas listing regulations.

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Legislative Council

LC Paper No. CB(1)996/05-06
(These minutes have been seen
by the Administration)

Ref : CB1/PL/FA/1

Panel on Financial Affairs

**Minutes of special meeting
held on Wednesday, 14 December 2005 at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Bernard CHAN, JP (Chairman)
Hon Ronny TONG Ka-wah, SC (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Dr Hon David LI Kwok-po, GBS, JP
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon SIN Chung-kai, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon WONG Ting-kwong, BBS
Hon CHIM Pui-chung
Hon Albert Jinghan CHENG
- Members attending** : Hon WONG Kwok-hing, MH
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
- Members absent** : Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP
Hon LEE Cheuk-yan
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon TAM Heung-man

- Public officers attending** : Mr Michael M Y SUEN, GBS, JP
Secretary for Housing, Planning and Lands
- Mr TAM Wing-pong, JP
Acting Permanent Secretary for Housing, Planning and Lands
(Housing)
- Mr Kenneth MAK, JP
Deputy Director (Corporate Services)
Housing Department
- Ms L K LAM
Assistant Director (Divestment)
Housing Department
- Mr Kevin HO, JP
Permanent Secretary for Financial Services and the Treasury
(Financial Services)
- Attendance by invitation** : Mrs Alexa LAM
Executive Director, Intermediaries and Investment Products
Securities and Futures Commission
- Ms Alice LAW
Director, Intermediaries and Investment Products
Securities and Futures Commission
- Mr Richard WILLIAMS
Head, Listing Division
Hong Kong Exchanges and Clearing Limited
- Clerk in attendance** : Miss Salumi CHAN
Chief Council Secretary (1)5
- Staff in attendance** : Ms Connie SZETO
Senior Council Secretary (1)4
- Ms May LEUNG
Legislative Assistant (1)8
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I. Financial issues related to the listing of the Link Real Estate Investment Trust

(Papers for this special meeting)

- LC Paper No. CB(1)514/05-06(01) — Paper provided by the Housing, Planning and Lands Bureau

- LC Paper No. CB(1)514/05-06(02) — Paper provided by the Securities and Futures Commission

- LC Paper No. CB(1)514/05-06(03) — Letter dated 12 December 2005 from the Chairman of the Board of Directors, The Link Management Limited, including:
 - Annex 1: Appendix 4 of the Company's Corporate Governance Policy
 - Annex 2: Press statement issued by The Link Management Limited on 9 December 2005
 - Annex 3: Press statement issued by Deutsche Bank on 9 December 2005

- LC Paper No. CB(1)514/05-06(04) — Extracts from the Securities and Futures Commission's Code on Real Estate Investment Trusts (June 2005), including:
 - Explanatory notes
 - General principles
 - Effect of breach of the Code
 - Chapters 8, 9 and 10
 - Appendices B and D

- LC Paper No. CB(1)514/05-06(05) — Press release issued by the Housing Authority on 8 December 2005

- LC Paper No. CB(1)514/05-06(06) — Statement issued by The Link Management Limited on 8 December 2005

LC Paper No. CB(1)524/05-06(01) — Relevant press cuttings from 26 November to 13 December 2005

Paper for the House Committee meeting on 9 December 2005

LC Paper No. CB(1)514/05-06(07) — Letter dated 9 December 2005 from Hon Albert CHENG to the Chairman of the House Committee

Papers for the special meeting of the Panel on Housing on 20 October 2005

LC Paper No. CB(1)62/05-06(01) — Background brief on “Divestment of Housing Authority's Retail and Car-parking Facilities” prepared by the Legislative Council Secretariat

LC Paper No. CB(1)514/05-06(08) — Opening statement by the Secretary for Housing, Planning and Lands

LC Paper No. CB(1)62/05-06(03) — Paper provided by the Administration

LC Paper No. CB(1)62/05-06(02) — Letters dated 4 and 7 October 2005 from Hon Albert CHAN to the Administration

LC Paper No. CB(1)108/05-06(01) — Administration's written reply to Hon Albert CHAN's two letters)

Purpose of the meeting

The Chairman advised that pursuant to the decision of the House Committee on 9 December 2005, the special meeting of the Panel on Financial Affairs (FA Panel) was arranged for Members to discuss the financial issues related to the listing of The Link Real Estate Investment Trust (The Link REIT). He drew Members' attention that in response to the Panel's invitation, Mr Paul CHENG, Chairman of the Board of Directors of The Link Management Limited (The Link), had indicated in his reply dated 12 December 2005 that due to short notice and his prior commitment in China, he was unable to attend the meeting.

Declaration of interest

2. The Chairman reminded Members that in accordance with Rule 83A of the Rules of Procedure of the Legislative Council (LegCo), a Member should not move any motion relating to or speak on a matter in which he had a pecuniary interest, whether direct or indirect, except where he had disclosed the nature of that interest. The Chairman declared interest that his company was a unit-holder of The Link REIT.

3. Mr SIN Chung-kai declared interest that he was a member of the Supervisory Group on Divestment established by the Housing Authority (HA) to steer and monitor the divestment project of HA's retail and car-parking (RC) facilities.

Papers for the meeting

4. The Chairman drew Members' attention to the relevant papers listed on the agenda, in particular the following papers:

- (a) Paper provided by the Housing, Planning and Lands Bureau (HPLB) (LC Paper No. CB(1)514/05-06(01));
- (b) Paper provided by the Securities and Futures Commission (SFC) (LC Paper No. CB(1)514/05-06(02)); and
- (c) Reply dated 12 December 2005 from Mr Paul CHENG, Chairman of the Board of Directors of The Link to the Clerk to FA Panel (LC Paper No. CB(1)514/05-06(03)).

5. The Secretary for Housing, Planning and Lands (SHPL) pointed out that the Administration had received a copy of the letter dated 13 December 2005 from Mr Paul CHENG to the Clerk to FA Panel. The letter, which was subsequently sent to the LegCo Secretariat, was tabled at the meeting.

(Post-meeting note: The letter dated 13 December 2005 from Mr Paul CHENG, Chairman of the Board of Directors of The Link, was issued to members of the Panel and non-Panel Members vide LC Paper No. CB(1)532/05-06(01) on 14 December 2005.)

Discussion on regulation of REITs

6. Mr SIN Chung-kai enquired about the differences between the regulatory requirements for REITs and listed companies in respect of share interest disclosure and the regulatory requirements for directors and senior officers. He also enquired whether the SFC would consider reviewing the disclosure regime for REITs in the light of recent market developments.

7. Mrs Alexa LAM, Executive Director, Intermediaries and Investment Products, the SFC advised that REITs were not subject to the existing share interest disclosure regime under the Securities and Futures Ordinance (SFO) (Cap. 571), which required shareholders to disclose interest of 5% or more shareholdings in a listed company. In drawing up the Code on REIT (REIT Code), consideration had been given to the question of whether REITs should be subject to the same disclosure regime applicable to listed companies. In this connection, the SFC was mindful of the need to strike a proper balance between enhancing the transparency of shareholding interests and minimizing compliance cost. According to the REIT Code, a REIT was structured as a unit trust governed by the provisions of a Trust Deed. As a unit trust, REIT had to appoint an independent Trustee and be managed by a REIT Manager licensed and monitored by the SFC. Under the Trust Deed of The Link REIT, a person having an interest in 10% or more of all the units in issue was a “significant holder”. A significant holder was required to notify the Trustee and the Manager of The Link REIT within three business days next following the acquisition of such interest and of every subsequent change in unit-holding by a whole percentage point above such threshold. However, in response to recent market developments concerning substantial acquisitions of REITs and the call for enhancing the transparency of shareholding interests of REIT units, the SFC had reviewed the situation and decided to adopt the 5% disclosure threshold under the SFO for REITs. The new disclosure threshold would apply to existing listed REITs and new REITs to be listed on the Stock Exchange of Hong Kong (SEHK). The SFC was discussing with The Link and its Trustee on applying the new threshold to The Link REIT.

8. As regards the regulation of REIT Manager, Mrs Alexa LAM advised that a Manager, i.e. a management company, was appointed in accordance with the REIT Code to manage the REIT. The REIT Manager was a corporation licensed by the SFC to carry out Type 9 Regulated Activity of Asset Management under the SFO. As a licensed corporation, the REIT Manager was subject to the application of the relevant codes of conduct and guidelines, including the Code of Conduct and the Fit and Proper Guideline for Licensees, issued by the SFC from time to time. At least one responsible officer of the REIT Manager was required to be a Director of the Board of the management company. The REIT Manager had to satisfy the SFC that it had put in place sufficient internal systems of controls and measures to ensure the compliance with all regulatory requirements, including the adoption of good corporate governance principles, avoiding and managing possible conflict of interests in order to safeguard investors’ interests. The SFC would monitor the REIT Manager on an on-going basis to ensure its compliance with the REIT Code, such as by conducting inspections on its internal systems of control. A breach of the relevant code of conduct and SFC’s guidelines by the REIT Manager would reflect badly on the licensed corporation’s fitness to remain as a SFC’s licensee.

Discussion on conflict of interest issue

9. Mr WONG Kwok-hing, Ms Emily LAU, Mr James TO, Mr Ronny TONG, Mr Albert CHENG and Mr LEUNG Kwok-hung expressed concern about the issue of possible conflict of interest between Mr Paul CHENG's advisory role with Deutsche Bank and his role as Chairman of the Board of Directors of The Link. Given the public concern about the issue, they considered that Mr CHENG should attend the Panel meeting to explain the matter. Mr Albert CHENG considered that even if Mr Paul CHENG was out of town, The Link should send other representatives to attend the meeting.

10. Members noted that Mr Paul CHENG was appointed as an independent non-executive director and Chairman of The Link on 1 April 2005, and appointed by Deutsche Bank as a Senior Advisor to its Asia Pacific Regional Advisory Board on the same day. Mr CHENG's advisory role with Deutsche Bank was not included in the Offering Circular in the Initial Public Offering (IPO) for The Link REIT (The Link REIT IPO) which was published on 14 November 2005.

Possible conflict of interest between Mr Paul CHENG's two roles

11. Mr WONG Kwok-hing was of the view that in considering whether there was any conflict of interest between the two roles of Mr Paul CHENG, it was necessary for Members to know the duties and responsibilities of Mr CHENG as the Senior Advisor to Deutsche Bank and whether he was remunerated for the position. Mr James TO raised the same points of concern. The Deputy Director (Corporate Services) of the Housing Department (DD(CS)HD) said that it was inappropriate for the Administration to respond on behalf of Mr CHENG. He however pointed out that Mr CHENG had, in his reply dated 12 December 2005 to the Clerk to FA Panel (LC Paper No. CB(1)514/05-06(03)), provided information on the responsibilities of his role as the Senior Advisor to Deutsche Bank.

12. Mr James TO pointed out that according to the press statement issued by Deutsche Bank on 9 December 2005 (Annex 3 of LC Paper No. CB(1)514/05-06(03)), Mr Paul CHENG's role as the Senior Advisor "extends to providing guidance and counsel to Deutsche Bank management on the general business and commercial environment in Hong Kong and Asia; its overall business development in Asia ...", etc. Mr TO was concerned whether Mr CHENG's provision of guidance and counsel on the overall business development of the Bank in Asia might cover the advice on the Bank's investment strategies, including the acquisition of additional units of The Link REIT and related issues.

13. Mr WONG Kwok-hing was concerned that if Deutsche Bank joined with some significant holders to propose replacing the Board of The Link or selling The Link REIT's assets, what position Mr CHENG would take in serving as the Senior Advisor to Deutsche Bank as well as the Chairman of the Board of Directors of The

Link, and whether there would be any real, potential or perceived conflict of interest involved. Ms Emily LAU shared Mr WONG's concern. DD(CS)HD advised that according to the Trust Deed of The Link REIT, unit-holders might raise a request at a general meeting of unit-holders for replacing the Board of Directors of The Link. The Board should then deal with the request in accordance with relevant provisions in the Trust Deed.

14. Mr WONG Kwok-hing and Ms Emily LAU enquired what actions the Administration would take to address the public concern about the conflict of interest issue relating to Mr Paul CHENG. Mr WONG also enquired whether the Administration would consider appointing another director to replace Mr CHENG as the Chairman of the Board of Directors of The Link. SHPL clarified that the appointment of Mr Paul CHENG as the Chairman of the Board of Directors of The Link had been made by the Board of Directors, not by the Administration or HA. Given that The Link was a private company and that both the Administration and HA did not retain any unit-holdings of The Link REIT, changes in the directors or Chairman of The Link was a matter for the Board of Directors of The Link to decide. The Administration or HA did not have any role to play in such matters. In this connection, Acting Permanent Secretary for Housing, Planning and Lands (Housing) advised that Mr CHENG had indicated in his reply dated 12 December 2005 that he would continue to review his position and consult The Link Board going forward.

Non-disclosure of Mr Paul CHENG's advisory role with Deutsche Bank

(a) in the Offering Circular for The Link REIT IPO published on 14 November 2005;

(b) during the meeting on 19 November 2005 to decide the pricing and allocations to investors for The Link REIT IPO

15. Ms Emily LAU was concerned why Mr Paul CHENG's advisory role with Deutsche Bank had not been included in the Offering Circular for The Link REIT IPO published on 14 November 2005. In this connection, she noted that the Administration was of the view that Mr CHENG's advisory role with Deutsche Bank was not material information that required disclosure in the Offering Circular (paragraph 21 of LC Paper No. CB(1)514/05-06(01)). Ms LAU enquired whether the SFC shared the Administration's view.

16. Mrs Alexa LAM advised that the SFC would not comment on individual cases. In general, REITs were required to comply with the REIT Code on disclosure requirements and ongoing reporting and compliance requirements, and to disclose information pertinent to them on a timely basis. Prior to listing, a REIT had to make adequate disclosure of relevant and material information about its operations in the offering circular. As regards whether a piece of information was material, it would be decided on the facts and circumstances of the case. Subsequent to listing, the REIT and its Manager had to ensure that the market was kept informed of any price sensitive information to avoid the creation of a false market. Mrs LAM added that disclosure of false information was a criminal

offence under the SFO and the SFC would take follow-up action on relevant offence and breaches of the REIT Code.

17. Ms Emily LAU was concerned whether there would be any real, potential or perceived conflict of interest involved in Mr Paul CHENG's two roles if Deutsche Bank continued to purchase units of The Link REIT in the market. She considered that there might be loopholes in the disclosure requirements of the REIT Code and suggested that the SFC should review the REIT Code in respect of the information subject to the disclosure requirements.

18. Pointing out that directorships and positions taken up by Mr Paul CHENG with other companies/organizations had been included in the Offering Circular of The Link REIT IPO, Mr James TO queried why Mr CHENG's advisory position with Deutsche Bank had not been included. In this connection, he noted from Mr CHENG's reply dated 12 December 2005 that "[g]iven the general and advisory nature of my role with Deutsche Bank and the focus in the Offering Circular on the requirement to disclose other directorships, we did not consider the details of my advisory position with Deutsche Bank to be material information for the purposes of disclosure in the Offering Circular at the time of its publication" (paragraph 7 of LC paper No. CB(1)514/05-06(03)). Mr TO queried whether the word "we" referred to the Board of Directors of The Link, and whether the Board came to such a view before or after the publication of the Offering Circular on 14 November 2005. SHPL advised that the Administration was not in a position to respond on behalf of Mr CHENG. Mr TO then enquired whether the word "we" mentioned in the reply included HA. DD(CS)HD advised that Mr CHENG had not consulted the Administration before issuing his reply to the Clerk to FA Panel, and the Administration was not sure what the word "we" referred to. However, the Administration was of the view that Mr CHENG's advisory role with Deutsche Bank was not material information that required disclosure in the Offering Circular. Whether Mr CHENG wished to include that particular information in his bio-data in the Offering Circular was a matter for Mr CHENG to decide.

19. Referring again to Mr Paul CHENG's reply dated 12 December 2005, Mr James TO noted that Mr CHENG's advisory position with Deutsche Bank had been disclosed in his profile on The Link's website from 1 April 2005 and his business card. Mr TO queried why the same information had not been disclosed in the Offering Circular for The Link REIT IPO. He considered that Mr Paul CHENG, the Administration and the SFC should respond to his questions. Moreover, the Administration and the SFC should take follow-up actions to address the issues and problems revealed in the listing of The Link REIT.

20. Mr James TIEN noted from Mr Paul CHENG's letter dated 13 December 2005 that Mr CHENG did not disclose his advisory role "because all along, that advisory role is regarded to be different to a directorship which was why it was not disclosed in the offering circular in the first place" (LC paper No. CB(1)532/05-06(01)). Mr TIEN enquired whether the Administration and the SFC

accepted Mr CHENG's explanation. Mrs Alexa LAM reiterated that the SFC would not comment on individual cases.

21. Mr Ronny TONG pointed out that Mr Paul CHENG, as the Chairman of The Link and a Senior Advisor to Deutsche Bank, was under fiduciary duties to act in the best interest of The Link and Deutsche Bank respectively. As such, he considered that there was potential conflict of interest between the two roles taken up by Mr CHENG. In this connection, Mr TONG noted that paragraph 8.2 of the REIT Code required the disclosure of, inter alia, any potential conflict of interests involving a connected person (including the management company of the scheme, its directors and senior executives/officers) in the scheme's offering document, and paragraph 10.1 of the REIT Code stated that "[t]he management [of the company] shall keep holders informed of any material information pertaining to the scheme in a timely and transparent manner". Mr TONG enquired whether the non-disclosure of Mr CHENG's advisory role with Deutsche Bank in the Offering Circular for The Link REIT IPO had contravened the relevant provisions of the REIT Code; and if had, what follow-up actions had been or would be taken by the Administration or the SFC.

22. Mr Ronny TONG also noted from the paper provided by HPLB that "[d]uring the meeting to decide the pricing and the allocations to investors under the IO [International Offering], Mr Paul Cheng did not remind the meeting of his advisory role with Deutsche Bank. We have carefully examined the matter and are satisfied that in the circumstances of the case, allocations to all investors under the IO have been made objectively and impartially, and the 'non-declaration' by Mr Paul Cheng did not have any impact on the outcome of the allocations" (paragraph 23 of LC Paper No. CB(1)514/05-06(01)). Mr TONG was concerned whether there was any real, potential or perceived conflict of interest involved in the non-declaration by Mr CHENG and what follow-up actions had been or would be taken by the Administration, HA and the SFC on the non-disclosure. He considered that the Administration, the SFC, The Link and Mr Paul CHENG should take action to address the concern about the conflict of interest issue. He was of the view that a possible option was for Mr CHENG to resign from one of his positions with Deutsche Bank or The Link. He further enquired whether there was a mechanism to require Mr CHENG to resign from one of the two positions.

23. Given that the conflict of interest issue relating to the listing of The Link REIT had aroused considerable public concern, Mr Albert CHENG considered that Mr Paul CHENG should consider resigning from one of the two positions concerned.

24. Mrs Alexa LAM said that the structure and operation of The Board of Directors of The Link were comparable to those of the board of directors of a listed company. Both the boards of The Link and listed companies were required to observe good corporate governance principles in conducting their activities, including setting up systems for disclosure of interests by directors, and putting in

place avoidance of conflict of interest measures, such as requiring directors who had declared interests in a matter not to participate in the discussion and decision-making process on the matter. While refraining from giving comments on the conflict of interest issue relating to Mr Paul CHENG, Mrs LAM re-iterated that The Link, as a licensed REIT Manager, was subject to the regulation of the REIT Code. As a SFC licensee, The Link was also subject to the relevant codes of conduct and guidelines issued by the SFC. Breaches of the codes or guidelines would result in disciplinary action taken by the SFC. Moreover, the conduct of The Link would have impact on its fitness and properness to continue to be a SFC licensed corporation.

Discussion on other relevant issues

Government policy on asset divestment

25. Mr Jeffrey LAM noted that the Government had remained the largest shareholder of the Mass Transit Railways Corporation Limited (MTRCL) since the listing of the Corporation and had imposed shareholding limit on single shareholders of the Hong Kong Exchanges and Clearing Company Limited (HKEx) upon the listing of the Company. He enquired about the reasons for not making similar arrangements for the divestment of HA's RC facilities. He further noted that while the Chairmen of the Boards of Directors of the MTRCL and the HKEx were appointed by the Chief Executive, the same arrangement was not made for The Link. In this connection, Mr LAM expressed concern that the Government had adopted different policies in respect of shareholdings and appointment of directors of the companies concerned in the divestment of public assets. He enquired about the criteria adopted in determining the arrangements to be made for different divestment projects.

26. SHPL advised that he was not in a position to respond to Mr Jeffrey LAM's questions, as they were within the purview of the Financial Services and the Treasury Bureau (FSTB). He also pointed out that HA's RC facilities were HA's assets, not Government's assets. DD(CS)HD added that it was the objective of HA to divest completely its ownership and control of the 180 RC facilities. This objective had been clearly stated during previous discussions on the divestment project with the Panel on Housing in 2003 and 2004, as well as the debate on the adjournment motion on the subject at the Council meeting on 1 December 2004. The objective had been achieved through the injection of those facilities into The Link REIT, and the public listing of The Link REIT on 25 November 2005. After the divestment, HA did not have any unit-holding interest in The Link REIT. In other words, The Link was fully independent of HA.

27. Mr Albert CHENG pointed out that the listing of The Link REIT was part of the privatization plan of the Government, and he did not agree with SHPL that the assets involved were not Government's assets. While the HA was responsible for taking the divestment project forward, HPLB and FSTB should also have an

important role to play.

28. The Permanent Secretary for Financial Services and the Treasury (Financial Services) advised that the Government had conducted a number of projects on the sale of public assets in the past, and the method and strategy of divestment varied with the nature of the assets in question and different circumstances of each project. The same approach was also adopted by overseas jurisdictions in selling public assets.

29. Responding to Mr Jeffrey LAM's question of why an upper limit had not been imposed on the shareholdings of The Link REIT to be acquired by individual parties, DD(CS)HD said that consideration had been given to the proposal. However, it was considered that the proposal, even implemented, would not prevent joint actions of unit-holders to control The Link REIT. He added that there were features under the REIT Code and/or the Trust Deed of The Link REIT that might limit the ability of a significant unit-holder from controlling The Link REIT to its own advantage rather than to the advantage of all unit-holders as a whole. The details of the features were set out in paragraph 9 of the paper provided by HPLB (LC Paper No. CB(1)514/05-06(01)).

Protection of interests of tenants concerned

30. Mr LEUNG Kwok-hung expressed grave concern about the divestment of HA's RC facilities. He pointed out that the conflict of interest issue concerning Mr Paul CHENG and the acquisition of substantial units of The Link REIT by hedge funds had demonstrated that the divestment project was fundamentally wrong.

31. Mr Albert CHENG said that all along, he did not support the divestment project and the listing of The Link REIT. Mr CHENG and Mr LEUNG Kwok-hing expressed concern about how the Administration or HA would protect the interests of the tenants concerned after completion of the divestment project, in particular, in preventing possible joint actions taken by significant holders of The Link REIT to replace the Board of Directors of The Link or to sell The link REIT's assets. Mr CHENG queried why the Administration had not put in place the following measures in the listing of The Link REIT:

- (a) To allow HA to retain the controlling unit-holdings of The Link REIT after its listing;
- (b) To impose an upper limit on unit-holdings of The Link REIT to be acquired by individual parties and restrictions on the voting rights of significant holders so as to prevent manipulation by significant holders; and
- (c) To appoint "cornerstone investors" who/which were prohibited from selling the units of The Link REIT within a certain period of time after

its listing.

32. On paragraph 31(a) above, Mr Albert CHENG pointed out that if The Link REIT wished to sell a property within two years of its acquisition, the sale must be approved at a general meeting of unit-holders by a special resolution, and the passing of the special resolution required a quorum of two or more unit-holders holding at least 25% of all units in issue. As such, if HA retained the controlling unit-holdings of The Link REIT, it would prevent manipulation by significant holders, such as the hedge funds.

33. On paragraph 31(c) above, DD(CS)HD explained that cornerstone investors were involved in the original IPO exercise in 2004 with a view to securing validation for the investment case and early demand for units. However, given the actual experience of the IPO in 2004 that demand for units of The Link REIT was high and broadly based, HA had decided not to have any cornerstone investors for the re-launch of the IPO in 2005. This had allowed HA a greater flexibility to allocate more units to other investors, including the retail investors and mandatory provident funds. DD(CS)HD added that The Link had engaged the same strategic partner in the re-launch of the IPO in 2005. The partner was pre-allocated about 4% of the units in issue and in return was prohibited from selling the units for a certain period of time after the listing of The Link REIT.

34. Given that there were abnormal price movements on The Link REIT arising from continuous purchase by hedge funds in the market in late November 2005, Mr Albert CHENG queried why HA still exercised its over-allotment option to dispose of its units in The Link REIT in early December 2005. DD(CS)HD advised that the option was exercised at the discretion of the underwriters for the listing without the need for approval from HA. The over-allotment option was part of a technical arrangement commonly deployed for the sole purpose of post-listing stabilization of the price of units/shares sold in the IPO. As the price of The Link REIT had risen after its listing, it was not necessary for the underwriters to keep the over-allotment shares.

35. Mr WONG Kwok-hing expressed concern that joint actions might be taken by significant holders to replace the Board of Directors of The Link or to demand for higher returns by imposing huge rent increases on the commercial tenants concerned. He enquired whether the Administration or HA would consider acquiring units of The Link REIT from the market to retain the controlling unit-holdings of The Link REIT in order to protect the interest of the tenants concerned.

36. DD(CS)HD re-iterated that it was the Administration's stance as stated in the closing of the Adjournment Debate on 1 December 2004, that in a free economy like Hong Kong, trading would follow market forces and the Government would not preclude any investor from acquiring units of The Link REIT from the market to become a significant holder. Nonetheless, the Administration had noted the concern about the impact of emergence of significant holders. In designing the

structure of The Link REIT, the Administration and HA considered that the multiple layers of protection available to a REIT were sufficient in addressing the concerns about one investor or a group of investors acquiring a controlling interest in The Link REIT. The details of the protection were set out in paragraphs 9 to 12 of the paper provided by HPLB (LC Paper No. CB(1)514/05-06(01)). For instance, there were features in the REIT Code and/or the Trust Deed of The Link REIT for limiting the ability of a significant holder from controlling The Link REIT to its advantage. These included restricting The Link REIT's key business to investment in real estate which would generally produce sustainable income, such as rental income, thus preventing the engagement in property development or speculative investments. Moreover, no unit-holder had a right to require that any assets of The Link REIT be transferred to him. A significant holder and its related parties were prohibited from voting their units or being part of a quorum for any meeting of unit-holders convened to approve any matter in which the significant holder had a material interest in the business to be conducted.

37. As regards the impact on public rental housing tenants, DD(CS)HD said that in July 2005, the Court of Final Appeal (CFA) had affirmed that the divestment by HA of RC facilities was consistent with HA's object to secure the provision of housing and such amenities ancillary thereto as HA considered fit. CFA had ruled that to secure the provision of RC facilities did not mean that HA needed to be the direct provider itself. CFA had also noted that The Link would adopt a market-oriented commercial approach in operating the RC facilities. Given that the RC facilities were located in public housing estates, market forces and commercial principles would compel The Link to take full account of the needs and purchasing power of the major users of those RC facilities, i.e. public rental housing tenants. DD(CS)HD added that it was stated in the Offering Circular of The Link REIT that The Link's business strategy was to raise return for units through measures, including improvement of RC facilities to enhance the business of commercial tenants and achieving savings in operating the RC facilities, instead of through substantial increases in rental.

38. On the question of acquiring The Link REIT units from the market, SHPL stressed that the Administration's objective was to divest the ownership and control of HA's RC facilities completely in one go. The Administration or HA did not have any plan to acquire The Link REIT units from the market after divestment.

39. Mr Albert CHENG and Mr LEUNG Kwok-hung considered that the Administration's response had not addressed their concern that both the REIT Code and the Trust Deed of The Link REIT would not be able to prevent the sale of RC facilities after the initial two-year period. They maintained the view that HA should retain the controlling unit-holdings of The Link REIT in order to protect the interests of tenants concerned.

40. DD(CS)DH re-iterated that it was not the intention of the Administration or HA to prohibit the sale by The Link REIT of its assets. Nevertheless, the sale of

the assets would not affect the facilities under The Link REIT being continuously used for retail and car-parking purposes, and would not affect the terms of use prescribed by the applicable government lease.

Valuation of RC facilities

41. Mr Albert CHENG noted the comments made by some financial analysts that the unit price of The Link REIT should be much higher than that fixed in the IPO in 2005. In this connection, Mr CHENG expressed concern about the underestimation of the value of the RC facilities and the resultant loss in the proceeds for HA from the sale of its assets.

42. DD(CS)HD said that there were a lot of factors affecting the prices of REITs and in general, prices were determined by market forces. At around the time of the IPO, the great majority of market players were of the view that the offered unit price of The Link REIT was set at an appropriate level. The Assistant Director (Divestment) of the Housing Department (AD(D)HD) added that HA had used the same methodology adopted for The Link REIT IPO in 2004 for the valuation of the properties in the re-launch of the IPO in 2005. The re-valuation had followed the stringent standard set out in Chapter 6 of the REIT Code and the international practice for valuation of REITs. With improved prospect of rental income growth for The Link REIT and enhanced cost control measures adopted by The Link, the asset value of The Link REIT had increased by 9.6% in the 2005 IPO vis-à-vis the valuation in the 2004 IPO. AD(D)HD added that it was inappropriate to make direct comparison on prices of REITs due to differences in their valuation methods and structures.

Discussion on the way forward

43. Given the various concerns expressed by members at the meeting, the Chairman invited members' view on the need for the FA Panel to follow up the financial issues relating to the listing of The Link REIT, such as the conflict of interest and disclosure issues involved.

44. Mr James TIEN said that the FA Panel might consider following up the issue relating to conflict of interest. Mr Abraham SHEK considered that issues relating to the divestment of HA's RC facilities were under the purview of the Panel on Housing and not the FA Panel. Mr Ronny TONG opined that conflict of interest of company directors was an issue relating to corporate governance of companies and was under the purview of the FA Panel. Mr CHAN Kam-lam did not consider it necessary for the issues to be followed up by the FA Panel or the Panel on Housing.

45. In response to the Chairman's further enquiry, Mr CHAN Kam-lam and Mr Abraham SHEK considered it not necessary for the FA Panel to discuss the subject further and to invite Mr Paul CHENG to attend a meeting of the Panel for discussion of the issue of conflict of interest between his advisory role with the

Deutsche Bank and his role as the Chairman of the Board of Directors of The Link. Other members present did not express other views. The Chairman concluded that it was not necessary for the FA Panel to follow up the issue.

(Post-meeting note: At the suggestion of Mr James TO, the FA Panel subsequently decided at its meeting on 5 January 2006 that the conflict of interest issue and other financial issues involved in and after the listing of The Link REIT be further discussed at the Panel meeting on 3 April 2006. Mr Paul CHENG and other representatives of The Link, and the Administration (including representatives from the HPLB and the Financial Services and the Treasury Bureau), the SFC, and the Hong Kong Exchanges and Clearing Limited had been invited to attend the meeting.)

II. Any other business

46. There being no other business, the meeting ended at 10:35 am.

Council Business Division 1
Legislative Council Secretariat
3 March 2006

**Extracts from the Code on Real Estate Investment Trusts
(June 2005)**

Chapter 10: Reporting and Documentation

- 10.1 The management shall keep holders informed of any material information pertaining to the scheme in a timely and transparent manner. The reporting requirements set out in this Code shall not prejudice or affect the application of any listing rules of an exchange on which the scheme is listed, in relation to dissemination of information to investors mandated by such rules.
- 10.2 All announcements, circulars and notices shall be submitted to the Commission for prior approval. Upon such approval, they shall be disseminated to holders as soon as reasonably practicable.

Note: Announcements shall be published in at least one leading Hong Kong English language and one Chinese language daily newspaper. Other electronic means of publication may also be considered by the Commission.

Announcements

- 10.3 The management company shall inform holders as soon as reasonably practicable of any information or transaction concerning the scheme which:
- (a) is necessary to enable holders to appraise the position of the scheme; or
 - (b) is necessary to avoid a false market in the units of the scheme; or
 - (c) might be reasonably expected to materially affect market activity in the scheme or affect the price of the units of the scheme, or
 - (d) requires holders' approval.
- 10.4 The following are examples of information that would require disclosure under 10.3. These examples do not constitute a complete list:
- (a) a material change in the scheme's financial forecast;
 - (b) a valuation of the real estate of the scheme, conducted upon request by the trustee under 4.2(d);
 - (c) issuance of semi-annual or annual report;
 - (d) any connected party transactions, subject to the HK\$1 million threshold in 8.14;
 - (e) a transaction (other than a connected party transaction) the value of which exceeds 15% of the gross asset value of the scheme;

- (f) a transaction (other than a connected party transaction) for services relating to the real estate of the scheme the value of which exceeds 15% of the aggregate value that the scheme committed to spend or has spent on services relating to real estate of the scheme during the twelve months preceding the relevant transaction;
- (g) a proposed disposal of real estate within a period of less than two years since acquisition;
- (h) a proposed change in the management company of the scheme;
- (i) a proposed change in the general character or nature of the scheme, such as the investment objective and/or policy of the scheme;
- (j) a recommendation or declaration or cancellation of a dividend or distribution;
- (k) issuance of new units (other than units issued pursuant to a dividend reinvestment plan);
- (l) a copy of a document containing market sensitive information or any financial documents that the scheme lodges with an overseas stock exchange (where applicable) or other regulator which is available to the public;
- (m) giving or receiving a notice of intention to undertake a merger or takeover;
- (n) a merger or acquisition;
- (o) a breach of the borrowing limit;
- (p) material litigation;
- (q) a significant dispute or disputes with contractors or with any parties;
- (r) a valuation of the scheme's real estate that has a material impact on the scheme's financial position or performance;
- (s) a major change in accounting policy adopted by the scheme;
- (t) a proposal to change the scheme's auditor;
- (u) a proposal to change the scheme's trustee;
- (v) a proposal to alter the level or structure of fees and charges only if such alteration requires holders' approval;
- (w) a decision or recommendation to request de-authorisation or delisting of the scheme;

- (x) a proposal to terminate the scheme; or
 - (y) a proposal to vary the intention stated regarding acquisition of properties within the first 12 months of listing (see Note (3) to 7.1).
- 10.5 The content of an announcement should contain sufficient quantitative information to enable investors to fully understand the nature and ascertain the implications of the announcement. Information disclosed in the announcement shall be factual, clear, succinct and unbiased.

Circulars

- 10.6 A circular shall be issued in respect of
- (a) transactions that require, or in the reasonable opinion of the trustee or the management company require, holders' approval; and
 - (b) material information in relation to the scheme.
- 10.7 The following are examples of circumstances in or in relation to which a circular shall be issued. These examples do not constitute a complete list:
- (a) transactions that require, or that in the reasonable opinion of the trustee or the management company require, holders' approval at a general meeting, including a proposal to:
 - (i) issue new units (other than units issued pursuant to a dividend reinvestment plan) that requires holders' approval under Chapter 12;
 - (ii) enter into a merger or acquisition;
 - (iii) enter into a disposal of real estate within a period of less than two years since acquisition;
 - (iv) change the management company of the scheme;
 - (v) change the general character or nature of the scheme, such as the investment objective and/or policy of the scheme;
 - (vi) alter the level or structure of fees and charges only if such alteration requires holders' approval;
 - (vii) enter into a connected party transaction which requires holders' approval under Chapter 8; and
 - (viii) request de-authorisation or delisting of the scheme.
 - (b) material information in relation to the scheme includes, but is not limited to:
 - (i) a transaction (other than a connected party transaction) the value of which exceeds 15% of the gross asset value of the scheme;

~~衛生福利及食物局局長：主席女士，我想政府在規劃時，當然會考慮上述的所有因素，而屯門第 46 區離開剛才提及的屋邨 1 公里以上，就香港的環境而言，這並非一個很短的距離。我們亦看到在其他方面，在香港這個如此難以物色到土地的地方，的確是不能找到另一幅一方面如此大，另一方面又遠離民居，而且有交通網絡直達的土地。就我們現時選擇的地方而言，一方面該地的交通可相當直接地接駁高速公路；另一方面，有關道路也無須經過屋邨。~~

~~周梁淑怡議員：局長未回答我的補充質詢。我最主要是問局長有否考慮在其他地區興建那些設施，而不是在屯門呢？~~

~~衛生福利及食物局局長：主席女士，我剛才也說過，我們有考慮其他地方，當然也是有考慮其他的地區的。我剛才也說過，現時某些地區已有現有的服務存在。我們會盡量利用現時有限的地方，例如哥連臣角、鑽石山及葵涌等。當然，我們會就這些工作與這些地區的區議會討論。~~

~~主席：第四項質詢。~~

領匯的上市安排

Listing Arrangements for The Link REIT

4. 鄭經翰議員：主席，領匯房地產投資信託基金（“領匯”）去年上市時，瑞士銀行是其中一家聯席全球協調人，並曾參與把基金單位發售價定為 10.3 元的決定。然而，該銀行在個多月前發表了一份研究報告，指領匯的資產值被低估，並把未來 12 個月的基金單位目標價定為 20.28 元，較最初發售價高出近一倍。有市民因此質疑公共資產是否遭賤賣，以及投資者會否把領匯轄下的零售及停車場設施分拆出售。關於領匯的上市安排，政府可否告知本會：

- (一) 是否知悉，瑞士銀行如何得出領匯的基金單位價格會在上市 15 個月後上升近一倍的估算；有沒有評估領匯的聯席全球協調人在釐定領匯的基金單位發售價時有沒有專業疏忽；
- (二) 鑒於投資者在持有領匯的基金單位 5%或以上權益時才須作出披露，當局是否知悉持有基金單位較多，而且合共持有基金單位半數或以上權益的人的名單；及

- (三) 鑒於領匯轄下的設施與數以十萬計的公屋居民的生活息息相關，當局有沒有措施防止投資者在取得領匯的控制權後把其資產分拆出售，這些措施會不會包括在市場上回購領匯基金單位？

房屋及規劃地政局局長：主席，我就質詢 3 個部分答覆如下：

- (一) 領匯上市後，有不少銀行和證券行的研究部，對領匯發表研究報告，並就其未來的目標價作出預測，其中包括協助籌備領匯上市的 4 間擔任聯席全球協調人或房屋委員會（“房委會”）的財務顧問的投資銀行，以及其他一些擔任包銷團成員的銀行。發表這些研究報告，是市場慣常的做法。就我們所知，該些研究報告對領匯未來 1 年的目標價，看法有頗大差異，由每基金單位 13.3 元至 20.28 元不等。這些差異是由於不同機構，依據不同的假設作推算的結果。當局不會評論個別的研究報告。

我要重申，房委會是委任行內信譽良好和經驗豐富的估值師為上市進行獨立物業估值的，所用的估值方法依循證監會《房地產投資信託基金守則》要求的標準，也與同類基金上市進行物業估值的國際慣例相符。

至於領匯首次公開發售的定價，除了要考慮物業估值外，亦受其他因素影響，其中包括利率走勢、領匯的預期派息率、亞太市場上同類基金的價格和派息率指標，以及市場對領匯業務發展潛力的看法等。就領匯的定價，除了 3 家聯席全球協調人聯合提供意見外，房委會的財務顧問亦向房委會提供獨立意見，保障房委會的利益。事實上，去年 11 月領匯上市時，市場上普遍認為領匯的定價合理，同時反映了當時的市場狀況。

- (二) 依循證監會的要求，領匯規定投資者如果持有領匯的基金單位 5% 或以上權益時，須向領匯及聯交所作出披露，然後由領匯及聯交所公布。當局並沒有掌握持有較多數量的領匯或其權益的人的名單。
- (三) 領匯在上市後成為私營機構。要完全禁止私營機構把轄下物業轉售第三者，在商業社會並不合適，各地的房地產投資信託基金亦沒有同樣的限制。然而，房委會在設計分拆出售的價格時，已考慮到有適當機制令領匯不能任意變賣資產或改變其用途。

首先，證監會的《房地產投資信託基金守則》限制領匯從事活躍買賣房地產的活動。領匯的主要收入，必須從房地產的經常性租金收益中取得。

第二，房委會與領匯的物業協議對分拆出售的物業附加了限制性契諾。領匯如果要出售公共屋邨內的某項商場或停車場設施，只可把該項設施整個出售，不可把設施拆散一部分出售。第三者從領匯購買該設施後，仍要遵守此規定。

第三，領匯從房委會購入的物業所涉及的政府租契（即一般所謂地契），已列明有關地段的土地用途。由於受地契約束，該些物業必須繼續作零售或停車場用途，不能隨意改變。如果要更改地契，須得到政府和契約各方的同意。換言之，該些物業在管理或控制權方面的任何轉變，並不會影響有關設施繼續作零售或停車場用途。

政府及房委會已一再重申，不會在市場上回購領匯基金單位。

鄭經翰議員：主席，我當然不滿意局長的回應，他沒有完全回答我的質詢。我不清楚局長是否知道，領匯上市後，它的股價一直上升，沒有下跌，今天已升至接近 20 元。

我主要就主體答覆第(三)部分提出補充質詢。局長在主體答覆第(三)部分指領匯上市時，被限制了不可從事活躍買賣房地產的活動。我昨天從報章得悉，它準備在大陸購買地產，我不清楚局長是否也知道。不過，主席，這不是我主要想提出的補充質詢。我現在要提出補充質詢了。局長可否回答一下，在終審法院有關領匯的審訊中，政府律師向終審法院保證了領匯在上市後，商場和停車場會繼續為公屋居民提供服務。如果領匯上市後，政府不可以參與或監察這間所謂的私營機構的活動，政府如何可確保履行終審法院的裁決和政府律師當時作出的保證，確保公屋居民得到合理，即價廉物美的服務？

主席：我相信大家都明白你的補充質詢了。

房屋及規劃地政局局長：我想鄭經翰議員補充質詢的重點是如何確保繼續有同樣的服務。我在主體答覆已解釋了，由於這是一項商業行為，如果限制領匯進行買賣，這是說不通的。在一個自由社會中，我們不可以加諸任何不合理的限制，要給予它適當的彈性，讓它可隨着時代的改變，作出它認為合適的決定。不過，我們的保證在哪裏呢？一如我剛才在主體答覆所說，我們在地契上訂有一項安排。如果一項設施的用途是商場，地契上便會清楚列明，一定要用作商場，而且我們亦說明不可以分拆出售。如果真的要出售，便必須把整項設施出售，而出售後亦只可以作原先訂有，即商場用途，第三者亦受到這項規定約束。正如我剛才所說，第三者在購入設施後，亦受到同樣約束。因此，這些安排確保了那些設施能繼續為居民提供服務。

陳偉業議員：主席，局長在主體答覆第(一)部分指出，領匯去年 11 月上市時，“市場上普遍認為領匯的定價合理”。我當時已多次指出，領匯的估價是賤賣資產，事實證明了我的說法。現在，領匯已升值超過 300 億元。基於估價錯誤，香港市民在短短數月內損失了超過 300 億元收入。局長可否回答，會否就領匯這個經驗 — 把政府資產以地產投資信託基金形式出售的模式 — 作一次全面檢討，特別是採用資產計算的方法？今次由於計算模式出錯，以致大幅或嚴重地低估整體的估值，導致公帑的收入蒙受嚴重損失。政府會否就這一次慘痛的經驗，或在被所謂的專家誤導的情況下作出了錯誤決定 — 政府官員缺乏這方面的專業知識而被誤導 — 進行一次全面檢討，以確保公帑不會再因錯誤的計算模式而蒙受嚴重損失呢？

房屋及規劃地政局局長：我在主體答覆說大家當時普遍認為那是一個合適的價格，是我在閱讀了所有報章後得出的結論，那是有根據的。或許陳偉業議員是其中一個很少的例外，他眼光獨到，可以看到股價會升到這麼高。因此，我剛才解釋過，當時在估值方面，我們究竟是如何處理，以及經過了很多人協同下，才定出那個價格。當然，現在因為其他因素影響，價格暫時是這樣，至於以後的價格走勢是怎樣，我們現在也不知道。

至於我們會否就這方面作出任何檢討，從我的角度來看，房委會在這方面能變賣的資產已經變賣了，已告一段落，我們不會再進行這方面的工作了。我們在這方面得到寶貴的經驗，如果政府內其他同事須進行同樣的事情，我們會把本身的體會與他們分享，但這不是我本人作出的決定。

陳偉業議員：主席，我的補充質詢不單是要求房委會，而是要求政府進行檢討。財政司司長可否代答這項補充質詢？關於公帑的損失，政府會否就以這個方法出售資產作全面檢討？

房屋及規劃地政局局長：我再重申，公帑有所損失，只是陳偉業議員的個人看法。依我來看，大多數人均不會認同這個看法。

梁國雄議員：局長在主體答覆第(一)部分說“就領匯的定價，除了3家聯席全球協調人聯合提供意見外，房委會的財務顧問亦向房委會提供獨立意見，保障房委會的利益。事實上……”，這即是指當時的定價合理。事實證明了領匯的估價相差了300億元，即有300億元差額。換言之，如果估值提高300億元，市場上亦會有人購買，這是不爭的事實，因為現在也有人購買。我想請問局長，他說不會就個別報告作出評論，其實對於那3家聯席全球協調人聯合提供的意見，局長有沒有詢問他們為何會是那樣呢？此外，局長會否考慮出席立法會以《立法會(權力及特權)條例》傳召他出席的答辯會呢？如果局長認為大多數人認為定價合理，我則認為不合理，那……

主席：梁國雄議員，你究竟想提出多少項補充質詢？你已把我弄得很混亂。

梁國雄議員：只是兩項補充質詢。

主席：議員每次只可以提出一項補充質詢，你想提出哪一項？(眾笑)

梁國雄議員：那麼，我提出第二項。我認為300億元的差價反映是低估了價值，請問局長會否出席立法會根據《立法會(權力及特權)條例》所召開的聆訊？

主席：請你先坐下。局長，據我所知，立法會還未召開這項聆訊。我只是將事實告訴你，你現在可以回答這項補充質詢。

房屋及規劃地政局局長：其實我亦是想這樣回答。（眾笑）我也未聽聞決定要舉行這項聆訊。當然，假如舉行這項聆訊，我們作為公職人員是一定要出席的。這是不爭的事實，我想無須我作答。

至於估價問題，當時上市時，我們擔心的是甚麼呢？我們擔心究竟能否售出那些基金單位，因為當時很多人也說經過了1年，時間不同了，息口亦上漲了，究竟能否售出那麼多單位呢？大家其實也知道，今次申請購買的人數較去年下降了很多，這或多或少也反映了當時的人對基金單位價格的反應。當然，現在事後因為有其他事前不知道的因素影響，所以才造成今天的情況。

譚香文議員：我想問，當局有否制訂一些應變措施，一旦領匯的基金營運被數個持有大量基金單位的投資基金或對沖基金操控時，來保障公眾，特別是公屋居民的利益？如果有，有關措施是甚麼呢？

房屋及規劃地政局局長：其實，我們主要保障的是單位持有人的利益，因為他們擁有領匯單位。在管理架構中，大家也知道，我們有一個獨立的專業受託人。在管理方面，領匯是一間管理公司，我們在設計管理階層方面，加強了它的獨立性，以及讓它能更容易保障一般持有人的利益。在管治方面，我們要求領匯的董事局，最少有一半董事是獨立和非執行董事，主席亦由獨立和非執行董事選出。同時，獨立非執行董事不可以在緊接建議任命之前兩年，曾與領匯重大持有人有關連。這保證了重大持有人的利益將會受到超過一半的獨立非執行董事來管理，這方面亦保障了其他的單位持有人的利益。因此，在這方面，我們是有這個機制作出制衡的。

主席：本會就這項質詢已用了超過19分鐘。現在進入第五項口頭質詢。

~~兩鐵合併~~

~~Merger of the Two Railway Corporations~~

~~5. 何鍾泰議員：主席，據報，九廣鐵路公司和地鐵有限公司（“兩鐵”）就合併的商討已接近達成協議，但兩鐵仍未交代合併後員工的就業安排。就此，政府可否告知本會，是否知悉？~~

**Conflict of interest issue and other financial issues
involved in and after the listing of
The Link Real Estate Investment Trust**

List of relevant papers
(Position as at 31 March 2006)

Meeting	Paper	LC Paper No.
House Committee meeting on 9 December 2005	Letter dated 9 December 2005 from Hon Albert CHENG to the Chairman of the House Committee	CB(1)514/05-06(07)
Special meeting of the FA Panel on 14 December 2005	Paper provided by Housing, Planning and Lands Bureau (HPLB)	CB(1)514/05-06(01)
	Paper provided by the Securities and Futures Commission	CB(1)514/05-06(02)
	Letter dated 12 December 2005 from the Chairman of the Board of Directors, The Link Management Limited, including: <ul style="list-style-type: none"> — Annex 1: Appendix 4 of the Company's Corporate Governance Policy — Annex 2: Press statement issued by The Link Management Limited on 9 December 2005 — Annex 3: Press statement issued by Deutsche Bank on 9 December 2005 	CB(1)514/05-06(03)
	Letter dated 13 December 2005 from the Chairman of the Board of Directors, The Link Management Limited	CB(1)532/05-06(01)

Meeting	Paper	LC Paper No.
	<p>Extracts from the Securities and Futures Commission's Code on Real Estate Investment Trusts (June 2005), including:</p> <ul style="list-style-type: none"> — Explanatory notes — General principles — Effect of breach of the Code — Chapters 8, 9 and 10 — Appendices B and D 	CB(1)514/05-06(04)
	Press release issued by the Housing Authority on 8 December 2005	CB(1)514/05-06(05)
	Statement issued by The Link Management Limited on 8 December 2005	CB(1)514/05-06(06)
	Relevant press cuttings from 26 November to 13 December 2005	CB(1)524/05-06(01)
	Minutes of the special meeting of the FA Panel on 14 December 2005	CB(1)996/05-06
LegCo meeting on 8 March 2006	Oral question no. 4 raised by Hon Albert CHENG and the Administration's reply	—
FA Panel meeting on 3 April 2006	List of questions previously raised by Members	CB(1)1152/05-06(01)
	Reply dated 22 March 2006 from the Chairman of the Board of Directors, The Link Management Limited	CB(1)1152/05-06(02)
	Paper provided by HPLB	CB(1)1179/05-06(03)
	Paper provided by the Securities and Futures Commission	CB(1)1179/05-06(04)