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21 July 2006

Mr Michael M Y SUEN, GBS, JP
Secretary for Housing, Planning and Lands
8th Floor, West Wing
Central Government Offices
11 Ice House Street
Hong Kong

Dear Mr SUEN,

Panel on Financial Affairs

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

Thank you for your reply of 26 May 2006.

On behalf of Hon Bernard CHAN, Chairman of the Panel, I write to invite the Administration to a meeting of the Panel scheduled to be held in September or October 2006 for discussion of the above subject and to provide written response to a list of questions.

Having noted the further information provided in your reply and the replies from The Link Management Limited (The Link) and Mr Paul CHENG, the Panel considers it prudent to further examine the relevant issues to ascertain whether conflict of interests were involved in Mr CHENG's two roles, i.e. the Chairman of the Board of Directors of The Link as well as a Senior Advisor to Deutsche Bank, during the period from 1 April 2005 to 31 March 2006. The Panel also considers that discussion at a meeting will enable Members to examine the relevant issues with the Administration and Mr CHENG in a more direct and effective manner. The Panel has therefore decided to invite the Administration and Mr CHENG again to a meeting to discuss the relevant issues.

To facilitate the Panel to fix the date of the meeting, the Chairman has directed me to invite Mr Paul CHENG to suggest some possible dates in September or October 2006 on which he would be available to attend the meeting. As Mr CHENG is out of town until mid-August, I shall keep the Administration informed of further developments.

To facilitate discussion at the meeting, the Chairman would also like to invite the Administration to provide written response to the list of questions attached. I should be grateful if you would let me have the Administration's written response (in both Chinese and English) **by 31 August 2006**. Please forward the soft copy of the response to Ms May LEUNG at mleung@legco.gov.hk. For your information, Mr Paul CHENG is invited to respond to another list of questions, a copy of which is also attached.

Please note that unless the Administration raises objection, the written response provided may be made available to the media and public and placed in the Library of the Legislative Council. It may also be made available on the website of the Council on the Internet.

Yours sincerely,

(Miss Salumi CHAN)
Clerk to Panel

Encl.

c.c. Hon Bernard CHAN, GBS, JP (Chairman)
Hon James TO Kun-sun
Secretary for Financial Services and the Treasury (Fax: 2147 3873)
Mr Paul CHENG, Chairman of the Board of Directors, The Link
Management Limited (Fax: 2175 1900)
Mr Kenneth MAK, JP, Deputy Director (Corporate Services),
Housing Department (Fax: 2762 1110)

} w/o encl.

LegCo Panel on Financial Affairs

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

List of further questions for the written response of the Administration

The Administration is invited to provide written response to the following questions (Questions 1 to 4 are raised by Hon James TO in his letter dated 29 June 2006 attached (LC Paper No. CB(1)1900/05-06(03)):

1. The Administration, in its reply to Hon James TO (Answer (a) to Questions 2 to 5 of LC Paper No. CB(1)1627/05-06(03)), stated that “[s]ince DB was not directly involved in the Link REIT IPO and did not provide any service to LML or The Link REIT, the question of conflict of interest did not arise. Hence, the former Permanent Secretary for Housing, Planning and Lands (Housing) (PSH) did not ask for details about the adviser position nor raise any objection to it [Note: ‘it’ refers to the appointment of Mr Paul CHENG as adviser to Deutsche Bank (DB)].”
 - (a) Does the Administration normally examine whether any potential conflict of interest may arise between the remunerated or non-remunerated positions held by the prospective appointees and the duties to be performed by them before appointing them to the board of directors of its subsidiaries?
 - (i) If it does, what is its specific definition for “conflict of interest”? Is this definition similar to that governing civil servants’ avoidance of conflict of interest?
 - (ii) If it does not, what are the reasons for that?
 - (b) When making the appointments to the Board of Directors of The Link Management Limited (The Link), did the Administration follow the normal practice mentioned above by examining the remunerated or non-remunerated positions held by Mr Paul CHENG to avoid conflict of interest that may arise after Mr CHENG took up the chairmanship of The Link?

- (i) If it did, was Mr CHENG required to submit any documents to the Administration for the above purpose before he formally signed the Acceptance of Appointment? If he was, did he furnish any information about his advisory role with DB to the Administration? If he was not, how did the Administration decide that there was no conflict of interest?
 - (ii) If it did not, what are the reasons for that?
- (c) Are directors of Government subsidiaries appointed by the Government normally required to complete a form for general declaration of interests?
- (i) If so, what items are included in the declaration? Do they include all remunerated advisory positions, as in the case of Members of the Executive Council?
 - (ii) Are directors of the Board of The Link required to make a general declaration of interests? If so, what items are required to be declared and do they include all remunerated advisory positions?
- (d) The Administration's reply seems to suggest that Mr C M LEUNG, the former PSH, was sure that Mr CHENG could serve as an adviser to DB based on the information Mr CHENG provided during their telephone conversation although he did not know that Mr CHENG received remuneration for it (as the Administration indicated in its paper that it was not aware of Mr CHENG's remunerated advisory role until April this year).
- (i) Is the above understanding correct? If not, what is the actual position?
 - (ii) In connection with the above, if such understanding is correct, what information did Mr CHENG provide to Mr C M LEUNG then?
 - (iii) Did Mr LEUNG, in deciding that Mr CHENG could serve as an adviser to DB, ask Mr CHENG to provide further information? If he did not, why not? If he did, what was included in the information provided to Mr LEUNG? Did Mr LEUNG furnish such information to the Board of Directors of The Link for reference?

- (iv) What were Mr LEUNG's justifications for confirming that Mr CHENG could serve as an adviser to DB before Mr LEUNG knew whether Mr CHENG's position was to be remunerated?
 - (v) In Mr LEUNG's view, would he have suggested that the Letter of Appointment be withheld pending clarification on Mr CHENG's role with DB had he known that Mr CHENG's advisory position with DB was a remunerated one?
- 2. Was the Administration aware that DB had applied for, and was allocated, units in the first Initial Public Offering (IPO) of The Link Real Estate Investment Trust (The Link REIT) at the end of 2004, and that it was therefore very likely that DB would apply again when the listing of The Link was relaunched? Did the Administration consider whether Mr Paul CHENG's role as Chairman of the Board of Directors of The Link and his remunerated advisory role with one of the banks involved would give rise to queries about unfairness?
- 3. Was the Administration aware that DB acted as a sponsor of another real estate investment trust (REIT) at the end of 2004? Did the Administration consider whether Mr CHENG's position with a bank which was the sponsor of another REIT would have adverse impact on The Link, given his role as Chairman of the Board of Directors of The Link?
- 4. In its reply to the questions raised by the LegCo, the Administration repeatedly indicated that DB "was not directly involved in the IPO preparatory work" or "in providing services to The Link or The Link REIT", and therefore Mr CHENG's role as a remunerated director of DB did not undermine his independence or give rise to any conflict of interest.
 - (a) Do the two conditions mentioned above serve to prove that Mr Paul CHENG complies with the requirements on independence of directors which are set out in Rule 3.13, Chapter 3 of the Listing Rules?
 - (b) Does the Administration consider that as long as the two conditions mentioned above are satisfied, there will not be any conflict of interest between Mr CHENG's dual role as Chairman of The Link and a remunerated adviser to DB, which is an investment bank?

- (c) Does the Administration consider that there will not be any conflict of interest when all the independent non-executive directors of listed companies comply with the requirements on “independence of directors”?
- (i) If so, why are directors required to “avoid actual and potential conflicts of interest and duty” as set out in Rule 3.08(d) of the Listing Rules, and is this requirement applicable to executive directors only while independent non-executive directors can be exempted?
 - (ii) If not, does it mean that there may be conflict of interest even if the requirements on “independence of directors” are complied with?
 - (iii) In connection with the above, although Mr Paul CHENG complies with the “independence” requirements for independent non-executive directors, would there be any possible conflict of interest?
5. In connection with Question 1(a), (b), (c) and (d) above, will the Administration consider introducing improvement measures to ensure that the persons to be appointed by the Government as chairman and/or non-executive directors of relevant bodies are free from conflict of interest?
6. In connection with Question 1(d) above, the Administration indicated in its reply dated 26 May 2006 (LC Paper No. CB(1)1627/05-06(03)) that Mr Paul CHENG verbally informed the former PSH that “he had been invited by Deutsche Bank to be its adviser, and asked PSH to advise whether he could accept it. The exact date could not be ascertained as there was no written record.” Will the Administration consider introducing improvement measures to ensure that written records will be kept for similar incidents in future?
7. According to the Administration’s reply dated 21 April 2006 (LC Paper No. CB(1)1352/05-06(01)), the Joint Global Coordinators (JGCs) and Financial Adviser (FA) to the Housing Authority for the IPO of The Link REIT confirmed that they had not discussed with Mr Paul CHENG about the allocation of units to DB or about the tentative lists of investors set out in an appendix to the discussion paper before the meeting of the Board of Directors of The Link on 19 November 2005, other than the general criteria for categorizing investors into different tiers, which were initially discussed at a previous Board meeting. In this connection:

- (a) What is the date of the “previous Board meeting”? and
- (b) Did the JGCs and/or FA have any form of discussions with Mr CHENG about the criteria for categorizing investors into different tiers before the “previous Board meeting” and the Board meeting on 19 November 2005?

Council Business Division 1
Legislative Council Secretariat
21 July 2006



立法會 CB(1)1900/05-06(03)號文件

(只備中文本)

(信件 C)

立法會財經事務委員會主席
陳智思議員

陳議員：

跟進領匯主席鄭明訓先生身兼德意志顧問可能有利益衝突一事

就領匯主席鄭明訓先生於零五年四月一日至零六年三月三十一日期間同時身兼投資銀行德意志的亞太區顧問委員會資深顧問一事，茲因政府、領匯及鄭明訓先生早前回覆本人提出的問題而提供的資料，令公眾能更深入了解事情經過，也因而令本人產生更多疑問，故本人希望當局能解答以下問題：

1. 在政府回覆本人的信件中(CB(1)1627/05-06(03)問題 2 至 5(a))指，「由於德意志銀行沒有直接參與領匯房地產投資信託基金(下稱「領匯房產基金」)首次公開發售的工作，亦沒有向領匯或領匯房產基金提供任何服務，因此，常任秘書長沒有查問顧問一職的詳情，亦沒有(按：就鄭明訓先生任德意志顧問一事)提出反對。」
 - (a) 在一般情況下，政府委任政府附屬公司的董事前，有否審核他們的受薪或非受薪職務，會否與將要擔任的職務有利益衝突?
 - i. 如有，政府就利益衝突的定義具體的定義是什麼？與規限公務員避免利益衝突的定義是否相近？
 - ii. 如政府沒有審核即將任董事的人事的利益衝突情況，原因為何？
 - (b) 在是次委任領匯的董事時，政府有否依照上述一般的做法，審核鄭明訓先生的受薪或非受薪職務，以避免鄭明訓先生任領匯主席後出現利益衝突？
 - i. 如有，鄭先生是否需在正式簽署委任書前，提交任何文件予政府用於上述用途？如需要的話，鄭先生有否向政府提交關於任德意志銀行顧問的資料？如否，政府如何判斷鄭先生沒有利益衝突？
 - ii. 如無，原因為何？
 - (c) 根據一般做法，獲政府委任為其附屬公司的董事，是否需要填寫一般性的利益申報表格？
 - i. 如有，利益申報的項目包括什麼，是否如行政會議，包括所有受薪的顧問職務？
 - ii. 領匯的董事是否需要作一般性的利益申報？如有，需要申報的項目包括什麼？是否需要申報所有受薪的顧問職務？

- (d) 根據政府回覆本人的文件給予本人的印象，梁展文先生根據鄭先生在電話交談所提供的資料，雖然當時並未得知鄭先生擔任顧問是受薪(由於政府在文件中指在本年四月才得悉鄭先生任顧問及受薪職位)，但已確定鄭先生可以擔任德意志的顧問。
- i. 本人上述理解是否正確? 如否，具體的情況為何?
 - ii. 承上題，如本人的理解正確，鄭先生當時提供了什麼資料予梁展文先生?
 - iii. 梁先生在判斷鄭先生可以擔任德意志的顧問時，有否要求鄭先生提供進一步資料? 如無，為什麼? 如有，梁先生得到的資料包括了什麼? 梁先生有沒有將這些資料提交予領匯董事會參考?
 - iv. 為何梁先生在不知鄭先生將要接任顧問職位是否受薪前，便確定鄭先生可以擔任該職位，其理據為何?
 - v. 梁先生認為，如當時他得知鄭明訓先生任德意志顧問是受薪職位，會否建議暫緩，待釐清鄭先生在德意志的身份才正式發出委任書?
2. 政府是否注意到，德意志銀行於零四年底領匯首次上市時，曾申請基金單位，並獲分配基金單位?故該銀行極有可能在領匯第二次上市時，同樣申請基金單位。政府認為，鄭明訓既是領匯主席，卻身兼其中一銀行的受薪顧問，會否令外間質疑不公平?
3. 政府是否注意到，於零四年底，德意志銀行擔任另一個「房地產投資基金」的保薦人。政府認為，鄭明訓既是領匯主席，卻身兼一間曾為另一個「房地產投資基金」的保薦人，會否對領匯造成不利的因素。
4. 政府在回覆立法會的提問時，多次提及「沒有直接參與領匯的首次公開發售工作」及「沒有向領匯或領匯房產基金提供任何服務」，故鄭明訓先生任德意志受薪董事不損其獨立性，也沒有利益衝突。
- (a) 上述兩個條件，是否用於證明鄭明訓先生符合《上市公司規則》第三章 3.13 董事的獨立性?
 - (b) 政府是否認為，只要德意志銀行符合上述兩項條件，即使鄭明訓先生既擔任領匯公司主席，而同時擔任投資銀行德意志的受薪顧問，也不會有利益衝突?
 - (c) 政府認為，是否所有符合「獨立董事」的資格的上市公司獨立非執行董事，便不會有利益衝突?
 - i. 如是，為何上市規則 3.08(d)條，要求董事「避免實際及潛在的利益和職務衝突」，是否只適用於執行董事，而獨立非執行董事可獲豁免?
 - ii. 如否，是否表示，即使符合「獨立董事」的資格，也可能會有利益衝突?
 - iii. 承上題，鄭明訓先生雖然符合獨立非執行董事的「獨立資格」，但會否仍有可能出現利益衝突的情況?

立法會財經事務委員會委員


涂謹申 謹啟

二零零六年六月廿九日