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Panel on Housing
Divestment of Housing Authority's Retail and Car-parking Facilities
Background brief

(Updated version as at 14 October 2005)

Purpose

This paper provides background information on the divestment of retail and car-parking (RC) facilities of the Housing Authority (HA) and summarizes the discussion on the issue by the Panel on Housing (the Panel) and on other occasions of the Legislative Council (LegCo).

Reasons for the divestment

2. HA currently holds approximately one million square metres of retail facilities and some 100 000 car-parking spaces, amounting to some 11% and 16% of the market respectively. Divestment of HA's RC facilities was first mooted in 2000, with the objective of enabling HA to focus its resources on its core function as the provider of public housing in Hong Kong. This 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 assess the feasibility of the divestment, recommend the divestment strategy and formulate an implementation proposal. Based on the findings of the consultancy study, the Administration put forward a divestment proposal to the Chief Executive in Council for consideration on 15 July 2003. The Chief Executive in Council ordered that HA's agreement be sought to divest its RC facilities, and that the net proceeds from the divestment should entirely go to HA. On 24 July 2003, HA agreed in principle to divest its RC facilities.

4. The reasons for the divestment, according to the Administration, are two-fold. First, it would enable HA to focus its resources on its core functions as a provider of subsidized public housing. Second, with the indefinite cessation of production and sale of Home Ownership Scheme flats, HA lacks a recurrent source of income. HA's

cash balance is forecast to decrease from \$22 billion at the beginning of 2003/04 to minus \$5.5 billion by the end of 2005/06. Proceeds from the divestment will help to meet HA's funding requirements in the short term.

Details of the divestment

5. HA agreed to adopt the following broad strategy to take forward the divestment –

- (a) A Real Estate Investment Trust (REIT)¹ structure (The Link REIT) would be established to hold HA's RC facilities to be divested;
- (b) A new company to manage The Link REIT (The Link Management) would be set up. This company would be beneficially owned by unit-holders of The Link REIT and held in trust by The Link REIT's trustees;
- (c) Initially, HA would assign the cash flow of the RC facilities to The Link Management and sign a sale and purchase agreement with it in respect of the RC facilities. On this basis, The Link Management would make an initial public offering (IPO) on The Stock Exchange of Hong Kong (SEHK) which, tentatively, was set in 2004-05;
- (d) At a later stage when preparation of relevant land leases were completed, HA would transfer the legal title of the RC facilities to The Link Management; and
- (e) The Link Management would pay to HA for the sale of the RC facilities by two installments: a major proportion of the sale amount would be paid immediately after the IPO and the balance would be paid upon the completion of transfer of legal titles.

6. HA also decided that other than a small proportion of the RC facilities which might be unsuitable for divestment because of their poor location, small scale, old age or obsolescent condition, all the RC facilities would be divested in one go.

Major concerns

7. After HA had agreed in principle to divest its RC facilities, the Panel held a number of meetings to discuss the subject. Members also discussed the issue on some other occasions. Their major concerns are summarized below.

¹ According to the Securities and Futures Commission (SFC) of Hong Kong, 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."

Impact on HA's financial situation

8. 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

9. 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. The benefits under the VES would include, inter alia, immediate payment of pension benefits irrespective of whether or not the officer concerned had attained the normal retirement age, but subject to completion of the stipulated minimum qualifying length of service. It was expected that some of the existing staff might be required to support the new company during the initial stage through secondment or service contracts. Staff might also be recruited by the new company given their operational knowledge and experience. 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.

10. At the special meeting of the Panel held on 22 November 2004, members received an update on the latest progress of the divestment. 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. On the progress of VES, the Administration advised that during the two-month application period ending 18 September 2004, 156 civil servants in HD had applied for VES. 90 would leave the civil service subject to their employment by The Link Management. Of these, 10 had joined The Link Management. An additional 48 HD staff not eligible for VES had also joined The Link Management. It was expected that all applications would be processed by 31 December 2004 to facilitate The Link Management's recruitment drive.

11. 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

12. 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. A list of their concerns and suggestions are set out in **Appendix I**. 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.

13. When the subject was again 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 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 Management 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 Management having regard to its commercial nature. Some members held the view that HA should secure an undertaking from The Link Management 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 Management. According to the Administration, it would not be appropriate to impose any condition on how The Link Management should manage the RC facilities. Nevertheless, it undertook to convey members' requests and views to The Link Management 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.”

Operation and structure of the new company

14. 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

15. 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

16. 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. Besides, one of the personnel involved, namely the Chief Executive Officer of The Link Management, had a notorious track record and questionable integrity. He considered that the Panel should not accept the HA's divestment plan until specific details on the valuation and relevant arrangements were available. 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.

Subsequent developments

17. The Link Management was set up in February 2004. In November 2004, it announced the listing arrangements and published the offering circulars of The Link REIT for public offering originally scheduled for 6 December 2004.

18. Given that the Administration and HA had disregarded the motion passed by the Panel at its meeting on 22 November 2004, the following motion for adjournment was moved at the Council meeting on 1 December 2004 –

“That this Council do now adjourn for the purpose of enabling Members, having regard to the Administration’s and the Housing Authority’s disregard for the motion passed by the Panel on Housing of this Council at its special meeting on 22 November this year that the Housing Authority should put the listing arrangements for The Real Estate Investment Trust (“The Link REIT”) on hold until a consensus has been reached between The Link Management and the commercial tenants, to debate and express opinions on the listing and public offering arrangements, evaluation of assets and all matters relating to the divestment of retail and car-parking facilities in public rental housing estates in respect of The Link REIT.”

The motion was negated.

19. On 8 December 2004, one day before the closing of the public offering period for The Link REIT, two public rental housing (PRH) tenants filed an application for judicial review of HA’s statutory power to divest its asset. The application was first considered by the Court of First Instance (CFI) which ruled that HA did have such a power. One of the two tenants then filed an appeal to the Court of Appeal of the High Court which upheld CFI’s ruling. Both Courts had expedited their deliberation process at the request of HA. The tenant later filed an appeal to the Court of Final Appeal (CFA) and refused to accept HA’s proposal to expedite the court procedure. As it was not possible for CFA to give a ruling on the matter before the scheduled listing date of The Link REIT, HA announced on 20 December 2004 its decision to postpone the listing of The Link REIT.

20. The decision had given rise to grave public concern. In this connection, an oral question on the implications of the postponement was asked at the Council meeting on 5 January 2005. At the Council meeting, concerns were raised on the possible tangible and intangible economic losses, such as the toll on the international status and reputation of Hong Kong, the impact on the offering price if the listing of The Link REIT was relaunched in future, etc. Some Members also questioned whether the Administration had ascertained the legal basis of the listing and the rationale for not including in the offering prospectus if there were anticipated legal challenges. They further queried the propriety for HA to exert pressure on the Courts to process the case as soon as possible. The Administration was also urged to strengthen communication with the parties concerned to ensure that the re-launching of The Link REIT in future would not encounter similar hurdles. The relevant

extracts from the Hansard of the Council meeting is in **Appendix II**.

21. The abortion of IPO of The Link REIT had aroused concern on the existing listing regime. The subject was discussed by the Panel on Financial Affairs at the briefing on the 2005 Policy Address on 19 January 2005, during which members opined that the Administration should consider amending the Housing Ordinance (Cap. 283) to explicitly provide HA with the power to divest its assets.

22. The impact of the unsuccessful listing of The Link REIT on the financial situation of HA was discussed by the Panel at its meetings on 3 and 21 January 2005. According to the Administration, HA would be able to sustain its operation until early 2007 without compromising its pledge to keep the average waiting time for PRH to an average of three years. However, the public housing programme might be affected if the divestment exercise were eventually called off. A member opined that divestment was not the only means to tackle HA's financial hardship. HA should continue its talks with the Government to sort out a long-term financial plan. The Administration was also urged to conduct consultation on the divestment again.

23. In view of the public concern about the entire process of divestment, a member held the view that a select committee should be set up to investigate into The Link REIT incident.

Latest developments

24. On 18 April 2005, CFA granted leave for the PRH tenant regarding her appeal in respect of the power of HA to divest itself of its RC facilities under the Housing Ordinance (Cap. 283). In anticipation of early conclusion of the judicial review proceedings and of legal finality of HA's power to divest, HA has stated its wish to relaunch IPO of The Link REIT as soon as practicable.

25. In view of the far-reaching implications of the Government's privatization plan, including The Link REIT, the following motion was moved at the Council meeting on 1 June 2005 –

“That, as the Government's recent public asset privatization plans, such as the listing of The Link Real Estate Investment Trust, the privatization of the Airport Authority Hong Kong, and the proposed merger of the two railway corporations, have aroused public concerns, and such plans involve issues of whether the implementation of privatization is beneficial to the community as a whole and whether it will affect people's livelihood and widen the disparity between the rich and the poor, etc, this Council demands that the Government should act prudently and suspend the privatization plans concerned and that, before the implementation of any public asset privatization plans, ad hoc committees comprising representatives from various sectors of the community should be set up to comprehensively and thoroughly assess and study their cost-effectiveness, return, legality and impact on the general public, etc and, based on the findings of such assessments and

studies, conduct full and extensive consultations; furthermore, the Government should ensure that any privatization plan which involves the public interest is for the benefit of the general public and must be subject to public scrutiny.”

The motion was negatived.

26. CFA heard the appeal on 5 and 6 July 2005 and unanimously dismissed it on 20 July 2005. HA later decided on 6 September 2005 to re-launch the global offering of units in a REIT to implement its decision to divest its RC facilities. It is intended that, subject to satisfying all regulatory and approval requirements, an offering circular for the re-launched offering will be issued in November 2005, and that a listing of units on SEHK will be completed before the end of 2005.

27. A chronology of relevant events and the relevant papers with their hyperlinks are in **Appendices III and IV** respectively.

Council Business Division 1
Legislative Council Secretariat
14 October 2005

**Major concerns and suggestions raised by commercial tenants
on divestment of retail and car-parking facilities
of the Housing Authority**

1. Rental policy

- 1.1 Rental increase by MgtCo for pursuit of higher profits?
- 1.2 Possibility of rent review on a three-year cycle, in accordance with Consumer Price Index (CPI) movements?

2. Various tenancy terms

- 2.1 Continue with the existing arrangement, including those for -
 - (a) air-conditioning charges;
 - (b) management fees (of which the rent is inclusive);
 - (c) rent deposit (ie generally two-months' rent, in cash and / or bank guarantee);
 - (d) exemption from stamp duty payment;
 - (e) area of letting being expressed in Internal Floor Area, instead of Gross Floor Area;
 - (f) negotiation mechanism on rental levels; and
 - (g) termination of tenancy
- 2.2 As a comfort to sitting commercial tenants -
 - (a) Will they be eligible (or enjoy priority) for tenancy renewal? [Note : Some groups have asked for tenancy renewal up to 9 years.]
 - (b) Alternatively, will the tenancy period for these tenants be extended (say, to 5 years)?
 - (c) Will MgtCo be prohibited from exercising "early termination" provision against these tenants?
- 2.3 Any one-off and unconditional waiver for the so-called "conspired sub-letting"?

- 2.4 Any ex-gratia payment (and, for those let on premium tender, return of premium) to those opting to move out, or those with tenancies not renewed by MgtCo?
- 2.5 Insurance against damage to the premises (by fire and other perils such as typhoon and flood) continues to be provided at the cost of the landlord?
- 2.6 Arrangement for commercial tenants benefited from the 2001 Rent Assessment Exercise, bearing in mind that the lower rent assessed under the exercise will expire by end of October 2004?
- 2.7 Arrangement for rent relief measures such as "rent adjustment" for new estates with slow population intake?

3. Trade mix

- 3.1 Continue with the existing trade mix to avoid unhealthy competition?
- 3.2 Prospect for MgtCo to minimize vacancy rate by compromising the original trade mix?

4. Interests of small tenants / social responsibility of MgtCo

- 4.1 How to protect the interest of small tenants?
- 4.2 How to avoid monopoly / oligarchy of RC facilities by individual operators (especially those of big names)?
- 4.3 More fundamentally, how to avoid MgtCo being "taken over" by large corporations?
- 4.4 Given MgtCo's priority to financial returns, how to ensure its social responsibility (e.g. provision of healthcare services) and commitments to the tenants?
- 4.5 Will MgtCo sell off RC properties under its portfolio, as they have an incentive to do so in respect of those with low return rate?
- 4.6 Will HA retain a certain degree of control over the operation of MgtCo after divestment?

5. Maintenance / repair cost

- 5.1 Will the MgtCo take up the cost of maintenance / repair services?
- 5.2 Will the MgtCo cut the budget for maintenance / repair services for these properties given their low return rate?

6. Communication channels with tenants

- 6.1 Any channel for commercial tenants to monitor the transitional arrangement?
- 6.2 Any consultation / communication mechanism between the MgtCo management and the commercial tenants?
- 6.3 Any appeal mechanism on MgtCo's decision in future? Any mechanism to monitor its policy (e.g. rental policy) and operation?
- 6.4 Will commercial tenants be represented on MgtCo's board of directors?

7. Operational management

- 7.1 Small tenants against a wider use of the single-operator system, but this is advocated by the existing "single operators".
- 7.2 Continue with the existing policy of out-sourcing carpark management to outside companies?
- 7.3 Ability for MgtCo to take up at once the management of a massive portfolio of RC facilities?
- 7.4 Will estate common areas and prohibited zones be clearly carved out to minimize potential management problems after divestment?
- 7.5 Important to ensure a smooth transfer of existing contracts or financial instruments (e.g. letter of guarantee) to MgtCo.

8. Others

- 8.1 Given all the adverse implications of the divestment project on the commercial tenants, will HA defer / call off the project?
- 8.2 Provision of clinic services according to population ratio?
- 8.3 Possible to exclude clinics from divestment, having regard to their social service nature?
- 8.4 Possible for commercial tenants to subscribe for The Link REIT units on a pre-emptive basis?
- 8.5 Possible for sitting tenants to buy their own shops?
- 8.6 Compensation arrangement for redevelopment?

Appendix II

Extracts from the Hansard of the Council meeting on 5 January 2005.

Postponement of Listing of The Link REIT

1. **MR JEFFREY LAM** (in Cantonese): *Madam President, the Housing Authority (HA) announced on the 19th of last month that in consideration of the legal and other implications that might arise from the relevant lawsuits, it had decided to postpone the listing of The Link Real Estate Investment Trust (The Link REIT), for which the procedure for public offering had already been completed. In this connection, will the Government inform this Council:*

- (a) *whether it has evaluated the tangible and intangible economic losses resulting from the failure to list The Link REIT as scheduled; if it has, of the results;*
 - (b) *whether it has evaluated the respective responsibilities to be borne by the Hong Kong Exchanges and Clearing Limited, the Securities and Futures Commission (SFC), the HA, the investment banks and consultants concerned, and the relevant bureaux and departments for the failure to list The Link REIT as scheduled; if it has, of the results; and*
 - (c) *of the lessons learnt from the incident, and whether it has assessed how the future privatization plans of public assets will be affected by political factors?*
-

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese):
Madam President, in response to Mr LAM's three-part question, my reply is as follows:

- (a) Broadly speaking, since The Link REIT cannot be listed as scheduled, the HA must repeat some preparatory work in order to relaunch the listing. Such work will incur additional expenses. Moreover, should interest rates go up or investors' sentiments change, pricing of The Link REIT upon the relaunch will be affected. This may in turn affect the divestment proceeds to the HA.

As for investors, whilst all their application monies have been refunded in a timely manner in accordance with relevant provisions in the Offering Circular, they may suffer a loss in terms of opportunity costs. Brokers lose the chance of earning transaction fees from the listing and subsequent trading of The Link REIT.

However, from a different perspective, the incident showcases the strength of Hong Kong's financial and stock market systems. The high transparency in information dissemination and efficiency in refund arrangement testify that the market is orderly and stable, and is able to deal with unexpected turns of event.

- (b) The HA is an independent statutory body and is fully responsible for taking the divestment project forward. As a matter of policy, the Government agrees with the HA's initiative and has been providing necessary support to the HA.

Given the significant magnitude of the divestment project, a number of public and private organizations are involved. Firstly, the Housing Department, being the executive arm of the HA, is responsible for the formulation and implementation of the project. The three investment banks serving as the Joint Global Coordinators, the financial advisor to the HA, The Link Management Limited which will manage The Link REIT, and the legal advisors of the various parties have been working closely on the project. Some government agencies, such as the Financial Services and the Treasury Bureau and the Lands Department, have also participated in the preparation work and provided support in various areas. The SFC and the Stock Exchange of Hong Kong play an approving and regulatory role in matters relating to the Link REIT and its listing.

I must emphasize that the divestment has a firm legal basis. The HA and the investment banks and lawyers involved in the project have carefully undergone considerable analytical work in this regard during the early preparatory stage of the project. They have also obtained clear opinions from both local and British senior counsels that the HA possesses the power to divest its retail and car-parking facilities under the Housing Ordinance. Therefore, there is no need to amend any law for the project to go ahead. As a matter of fact, since the HA announced its decision on the divestment in July 2003, the matter has been reported from time to time in the media and discussed a number of times in the Legislative Council Panel on Housing. It was also discussed in the full Council during a lengthy adjournment debate on 1 December. During all that time, the lawfulness of the divestment has never been questioned.

It is evident from the above background that the listing of The Link REIT could not proceed as scheduled was not a result of inadequate preparation or weak legal basis. It was due to the filing of a judicial review application, which challenged the HA's statutory power to divest its property, by some members of the public just one day before the public offering period for The Link REIT closed. Although both the Court of First Instance and the Court of Appeal of the High Court have expedited their deliberation process and ruled that the HA did possess the power to divest, the applicants had the

right to appeal to the Court of Final Appeal (CFA). As such, and with an applicant's refusal of the HA's proposal to expedite court action, it was not possible to take the case to the CFA for a ruling on the matter before the scheduled listing date of The Link REIT. In making our utmost efforts to proceed with the listing as scheduled, we examined thoroughly various remedial options with the Joint Global Co-ordinating Banks and legal advisors. However, given the time constraint, it was not possible to complete in time all the measures required under those remedial options. To safeguard the interests of both investors and the HA, the HA decided not to proceed with the listing of The Link REIT on 20 December. This was in the best interest of the public and was the most prudent and responsible arrangement in the circumstances.

- (c) The sudden emergence of the judicial review during the offering period of The Link REIT is both unprecedented and hard to predict. Before relaunching the listing of The Link REIT, we will carefully examine together with the investment banks and legal advisors how best to make reasonable disclosure for any potential legal challenges that may arise during the offering period, so as to reduce the risk to the listing to a manageable level.

Summing up the experience from The Link REIT incident, we recognize that some commercial tenants, residents of public housing estates and members of the public are still not very clear about the divestment project and the future business strategy of The Link Management Limited for its shopping malls and car parks. We will step up our efforts to communicate with and brief relevant parties in a more in-depth and comprehensive manner, with a view to removing their doubts and misgivings as far as possible.

As for the impact on future privatization plans of the Government, the aborted listing of The Link REIT is an isolated incident, and will not affect the implementation of other privatization plans by the Government along the "small government, big market" principle. When developing each plan, the Government will examine carefully all possible factors that may affect the plan, and will listen extensively to the views of various parties to ensure the plan's smooth implementation.

MR JEFFREY LAM (in Cantonese): *Madam President, the Secretary has not really answered part (a) of the main question. May I ask the Secretary via the President whether he can provide specific figures to state clearly the tangible and intangible losses involved? For example, specific figures on the administration costs incurred by the Government or the HA, brokers' commission and interest costs to small investors in respect of the relevant arrangement. This is the largest real estate fund in the history of Hong Kong that*

PRESIDENT (in Cantonese): *Mr LAM, please just state your supplementary question.*

MR JEFFREY LAM (in Cantonese): *Since the incident takes a heavy toll on the international status and reputation of Hong Kong, causing intangible loss, will the Secretary give a reply in this respect?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): *Madam President, in respect of specific figures, for the HA, about \$350 million has been spent since the introduction of the divestment project to date. To make arrangement for relaunch of the listing, we have to repeat some preparatory work, such as valuation and printing of the offering prospectus. The extra expenses so incurred will be about \$100 million. The HA estimates that the divestment project and the two items of work mentioned earlier will approximately cost \$900 million.*

In respect of the losses suffered by brokers, I believe it is hard to be quantified, for we do not know the transaction amount and commission level concerned. However, we can provide a figure on the funds frozen during the offering period, which is about \$280 billion. Certainly, the HA has earned a meager income of about \$7 million from the offering. However, other losses in terms of opportunity costs involved in the incident can hardly be quantified. As to the intangible influence on Hong Kong and the impact on its status as an international financial centre, Madam President, I shall defer to my colleague, Secretary Frederick MA, with your indulgence.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, our status as an international financial centre is founded on our judicial independence and the spirit of the rule of law in Hong Kong, as well as our good regulatory regime and excellent infrastructural facilities. In terms of talents, Hong Kong also has considerable advantages, and that is why we can establish a good reputation as an international financial centre. As Secretary Michael SUEN said, the unsuccessful listing of The Link REIT this time is only an isolated incident, and I believe it will not affect our status as an international financial centre. Definitely, we hope to do the best we can in every single listing. As Secretary Michael SUEN said earlier, this incident was unpredictable. Therefore, we hope that we will do a better job when the listing is relaunched in the future, so as to further consolidate Hong Kong's status as a financial centre.

PRESIDENT (in Cantonese): Members, we have spent twelve and a half minutes on a single supplementary question with two replies. There are altogether 17 Members waiting to raise their supplementary questions now, I would thus exercise my discretion to extend the time limit for this question, but I believe some Members may still be disappointed. Mr Andrew LEUNG.

MR ANDREW LEUNG (in Cantonese): *Madam President, after this incident, if the listing of The Link REIT is relaunched in future, what kind of impact will there be? Will it result in a cut in offering price?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, as I said in my main reply, if we were to relaunch the listing, we have to face circumstances which would be different. The interest at that time may have risen or fallen, which is something we cannot estimate accurately at the moment, and the investment climate then prevalent may have changed. All such factors will have a bearing on the offering price, thus affecting the proceeds from the divestment of assets. Of course, it is not possible for us to answer clearly whether the change will be an increase or a decrease. However, we hope that we can strive for the early completion of all outstanding work so as to launch the listing as soon as possible. If the time lag involved is shorter, the differences then prevailing will be smaller.

MR VINCENT FANG (in Cantonese): *Madam President, The Link REIT incident reflects that many commercial tenants of public housing estates are indeed worried about the commercialization followed by the listing, for they are anxious that their rent and interest will be affected. If the listing of The Link REIT is relaunched, how the interest of commercial tenants and residents of public housing can be assured, and the provision of good development opportunity be ensured?*

PRESIDENT (in Cantonese): Mr Vincent FANG, I am afraid I do not see how the worries of commercial tenants cited in your supplementary question are related to the theme of this question, the evaluation of the relation between tangible and intangible losses. Perhaps you may give some thought to it, and I will let you raise your question again later.

MR VINCENT FANG (in Cantonese): *Fine.*

MR RONNY TONG (in Cantonese): *In the main reply, the Secretary stated that clear legal opinions had been obtained from local and British senior counsels before the listing. However, the judgements of the Court of First Instance and the Court of Appeal on the case pointed out clearly that the applicants had strong grounds and substantial legal justification for the case, and the trial Judge even pointed out that the listing had been a rash move.*

PRESIDENT (in Cantonese): Mr TONG, please state your question direct.

MR RONNY TONG (in Cantonese): *May I ask the Secretary, in the course of seeking legal opinion, had the two senior counsels been required to assess the legal basis for a possible challenge of the listing; if an assessment has been made, why a clear explanation in this respect has not been included in the offering prospectus?*

PRESIDENT (in Cantonese): Which Secretary will answer this supplementary question? Secretary Michael SUEN.

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, in retrospect, facts speak for themselves. Four Judges from the two levels of Courts unanimously ruled that the legal basis of the listing was valid and the challenge was not successful. When we sought advice from local and British senior counsels, the same opinions were given. Naturally, no one foresaw the possible challenge to this basic point at that time, and thus this had never been regarded as a risk. The risk assessment conducted by us was not without foundation; instead, a set of criteria was followed. Also, we had to answer questions raised by the regulatory authorities. We assessed the need for the disclosure of certain matters according to those criteria and questions, and the legal advice we obtained on this was very clear. Though some people may now question why an amendment to the ordinance had not been proposed, I do not consider an amendment necessary as the two levels of Courts had already ruled in favour of us. This means there is no problem with the ordinance. So, how are we going to amend the ordinance, we really do not know.

In view of the circumstances at the time, where our opinions in this respect were in agreement, we did not see the need for disclosure of anything in this regard. We went through a very stringent procedure at the time and had answered all the questions of the regulatory authorities. Neither we nor the regulatory authorities considered disclosure in this respect necessary. Now, after this incident, as I just said, if we are to relaunch the listing, we may have to, in the light of the progress of the court case and the circumstances then prevailing, make some appropriate disclosure.

PRESIDENT (in Cantonese): Mr Martin LEE.

MR RONNY TONG (in Cantonese): *Madam President, may I ask a follow-up?*

PRESIDENT (in Cantonese): Which part of your supplementary question has not been answered? You only need to point out that part.

MR RONNY TONG (in Cantonese): *The Secretary has not answered my supplementary question at all. My supplementary asked him whether the two senior counsels had been requested to assess the possible challenge of the legal basis of the listing. Is the Secretary saying that he did not ask them, or that he did ask them but the information was not disclosed in the offering prospectus? The reply of the Secretary was very long, but I heard no answer to my supplementary question.*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, as I said earlier, we decided the extent of disclosure in the light of the large number of questions raised by the regulatory authorities. We had gone through the relevant procedures and did not consider such disclosure necessary. Besides, the regulatory authorities also considered such disclosure not necessary.

MR MARTIN LEE (in Cantonese): *Madam President, the tangible and intangible economic losses resulting from the incident should definitely include the people's confidence in government officials. May I ask whether the government official responsible for the listing of The Link REIT has, under any circumstances, disclosed any information as an "informed source" to deliberately mislead the media, the public and even the Court to think that the listing, if failed to proceed smoothly, might render the financial status of the HA vulnerable or even make it bankrupt, and might affect the target of allocating flats to waiting list applicants within three years? For such act may intensify public sentiments, mounting pressure on the Court to process the case as soon as possible.*

PRESIDENT (in Cantonese): Which Secretary will answer this supplementary question? Secretary Michael SUEN.

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, every day, there are lots of opinions expressed in society on all kinds of issues. I do not know what sort of misleading information Mr Martin LEE was referring to earlier. He did not make it clear, so I do not know who is misleading as he said. However, I have also heard of similar comments.

The question is that the HA is actually facing enormous financial pressure. We are now facing the court case in question as well as another court case on rent reduction. Therefore, if both cases were ruled against the HA, we would of course face tremendous pressure. As to when we will become incapable of discharging the statutory work stipulated under the relevant ordinances, we do not know how long before we come to that state, for it depends on the prevailing circumstances. Certainly, I believe Members all know that I have not made those comments to which Mr Martin LEE referred earlier, and I have never commented on it.

MR MARTIN LEE (in Cantonese): *I am not referring to the Secretary. I mean to ask whether government officials have disseminated information which was not true as informed sources to mislead the media, or even the Court.*

PRESIDENT (in Cantonese): Secretary, do you have anything to add?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, I have nothing to add. As far as I know, none of my colleagues have ever done so.

MS MIRIAM LAU (in Cantonese): *Madam President, the Secretary said earlier that they could have done a better job regarding The Link REIT incident. Having learnt a lesson from the postponed listing of The Link REIT, how will the authorities strengthen their communication with the parties concerned in future or in which aspect can the authorities do better, so as to prevent the relaunched listing of The Link REIT or the privatization of other government assets in future from meeting similar hurdles?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, as I said in my main reply earlier, summing up the experience of the incident, we will explain to commercial tenants and residents of public housing estate as well as members of the local community the divestment project and business strategy to be adopted by The Link Management Limited in future for its shopping malls and car parks, for some of them are still not clear about

these issues. Before the last adjournment debate, some Members from the Liberal Party had reflected this opinion to us, and we undertook to step up our efforts in this respect at that time. Now, we have more time in our hand. So, started from last week, we began to explain the case again to District Councils and the relevant trade associations. Again, pamphlets are issued to explain our policy and future strategy in this respect, with frequently asked questions and information included. We hope that by doing so, we can address their questions as far as possible.

MR CHIM PUI-CHUNG (in Cantonese): *Madam President, just now, the Secretary replied that about \$350 million were lost in The Link REIT incident. Losses incurred by other investors in terms of interest, manpower, resources and time are definitely substantial. My supplementary question is: Who should be held responsible for this incident? Should it be the sponsor, the underwriter, the counsels or the SFC? Has the Government made any assessment? If it turns out to be fruitless, how can worldwide or local investors have confidence in Hong Kong?*

PRESIDENT (in Cantonese): Which Secretary will answer this supplementary question? Secretary Michael SUEN.

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, the major difficulty we are facing at the time, as I said in my main reply, is that we cannot launch the listing so far despite the two levels of Courts have already confirmed our legal basis and legality of the divestment, for the legal proceedings initiated by the court case are still pending. Madam President, I remember at the adjournment debate held by the Legislative Council on 1 December last year, extensive discussion on this question was held. At that time, no Member gave any indication on the possible legal challenge we might face, nor had any Member given any oral reminder to us. I recalled that, at that time, Members only raised questions on three main aspects: First, the dirt cheap prices; second, the proportion of divestment; and third, the communication with commercial tenants. At that time, no Member mentioned this; even the press gave no indication of a possible challenge against the legality of the listing. The challenge was an extremely sudden and unpredictable move. I, thus, consider it premature to draw a conclusion now. However, at this very moment, this seems to be the major cause.

MR CHIM PUI-CHUNG (in Cantonese): *The Secretary has not answered my supplementary question. Who should be held responsible? Is it the fault of society and that no particular person should be held responsible?*

PRESIDENT (in Cantonese): Secretary, do you have anything to add?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, as I said earlier, we say that this is the cause of the incident or the reason for this. We have to wait until the entire incident is over before we can have a blow-by-blow account of it, examining the responsibility issue.

PRESIDENT (in Cantonese): We have spent more than 26 minutes on this question. Mr FANG, I have given you time to consider your question, please raise your question again.

MR VINCENT FANG (in Cantonese): *Madam President, my supplementary question is on the worries of small commercial tenants about the listing. The Secretary said earlier that communication would be enhanced if the listing was to be relaunched. May I ask what specific measures the authorities will implement to enhance their communication with tenants?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, in my earlier reply to Ms Miriam LAU, I talked about communication, and such communication will be enhanced via trade associations and District Councils, making the information known to more people. Certainly, in addition to this, we will also go to the shopping malls direct to explain the case to tenants face to face. We will do such work.

PRESIDENT (in Cantonese): I hope that those Members who have not had the chance to raise supplementary questions on this question will follow up the issue through other channels. Second question.

Appendix III

Divestment of Housing Authority's Retail and Car-parking Facilities

Chronology of events

Date	Event
15 July 2003	The Chief Executive in Council approved the divestment plan
24 July 2003	HA approved the divestment plan
31 October 2003	HA announced appointment of Global-Coordinator and advisers to assist in the divestment plan
3 November 2003	Meeting of the Panel on Housing to discuss divestment of HA's RC facilities
1 December 2003	Meeting of the Panel on Housing to discuss divestment of HA's RC facilities
9 December 2003	HA's Supervisory Group on Divestment met with commercial tenants
December 2003	The Administration met with staff unions and staff of the Commercial Properties Sub-division to exchange views
February 2004	Incorporation of the Link Management
21 April 2004	HA appointed Chief Executive Officer and Chief Financial Officer of the Management Company
21 April 2004	The Administration announced the voluntary exit scheme for Housing Department staff affected by the divestment plan
3 May 2004	Meeting of the Panel on Housing to discuss the progress of divestment of HA's RC facilities
5 July 2004	Meeting of the Panel on Housing to listen to views of deputations on the divestment

22 November 2004	Meeting of the Panel on Housing to discuss the progress of the divestment
25 November 2004	The Administration went ahead with the listing arrangements and published the offering circulars of The Link REIT
1 December 2004	Motion for adjournment for the purpose of discussing the divestment moved and negatived at the Council meeting on 1 December 2004
8 December 2004	An application for judicial review which challenged the HA's power to divest its property was filed by two PRH tenants one day before the public offering period for The Link REIT closed
20 December 2004	The HA announced its decision to postpone the listing of The Link REIT
5 January 2005	An oral question on the implications of the above decision was asked at a Council meeting
1 June 2005	A motion demanding the suspension of privatization covering the Link REIT was moved at a Council meeting and negatived

Divestment of the Housing Authority's Retail and Car-parking Facilities

List of relevant papers

Council/Committee	Date of meeting	Paper
Housing Panel	14 January 2003	LC Paper No. CB(1)941/02-03 http://www.legco.gov.hk/yr02-03/english/panels/hg/minutes/hg030114.pdf
Council Meeting	2 April 2003	Hansard http://www.legco.gov.hk/yr02-03/english/counmtg/hansard/cm0402ti-translate-e.pdf
Housing Panel	3 November 2003	File Ref: HD(CR)/(CS) Div/DV/3 http://www.legco.gov.hk/yr03-04/english/panels/hg/papers/hg1103cb1-hplb-e.pdf LC Paper No. CB(1)190/03-04(04) http://www.legco.gov.hk/yr03-04/english/panels/hg/papers/hg1103cb1-190-4e.pdf LC Paper No. CB(1)190/03-04(05) http://www.legco.gov.hk/yr03-04/english/panels/hg/papers/hg1103cb1-190-5e.pdf LC Paper No. CB(1)438/03-04(03) http://www.legco.gov.hk/yr03-04/english/panels/hg/papers/hg1201cb1-438-3e.pdf LC Paper No. CB(1)439/03-04 http://www.legco.gov.hk/yr03-04/english/panels/hg/minutes/hg031103.pdf

Council/Committee	Date of meeting	Paper
Housing Panel	1 December 2003	LC Paper No. CB(1)438/03-04(03) http://www.legco.gov.hk/yr03-04/english/panels/hg/papers/hg1201cb1-438-3e.pdf LC Paper No. CB(1)668/03-04 http://www.legco.gov.hk/yr03-04/english/panels/hg/minutes/hg031201.pdf
Housing Panel	3 May 2004	LC Paper No. CB(1)1638/03-04(03) http://www.legco.gov.hk/yr03-04/english/panels/hg/papers/hg0503cb1-1638-3e.pdf LC Paper No. CB(1)2030/03-04 http://www.legco.gov.hk/yr03-04/english/panels/hg/minutes/hg040503.pdf
Establishment Committee	16 June 2004	EC(2004-05)9 http://www.legco.gov.hk/yr03-04/english/fc/esc/papers/e04-09e.pdf
Housing Panel	5 July 2004	LC Paper No. CB(1)2291/03-04(08) http://www.legco.gov.hk/yr03-04/english/panels/hg/papers/hg0705cb1-2291-8e.pdf LC Paper No. CB(1) 2503/03-04 http://www.legco.gov.hk/yr03-04/english/panels/hg/minutes/hg040705.pdf
Council meeting	20 October 2004	Hansard http://www.legco.gov.hk/yr04-05/english/counmtg/hansard/cm1020ti-translate-e.pdf

Housing Panel	22 November 2004	LC Paper No. CB(1) 276/04-05(01) http://www.legco.gov.hk/yr04-05/english/panels/hg/papers/hg1122cb1-276-1e.pdf LC Paper No. CB(1) 276/04-05(02) http://www.legco.gov.hk/yr04-05/english/panels/hg/papers/hg1122cb1-276-2e.pdf LC Paper No. CB(1) 1025/04-05(01) http://www.legco.gov.hk/yr04-05/english/panels/hg/papers/hg1122cb1-1025-1e.pdf
Council meeting	1 December 2004	Hansard http://www.legco.gov.hk/yr04-05/english/counmtg/hansard/cm1201ti-translate-e.pdf
Housing Panel	3 January 2005	Minutes http://www.legco.gov.hk/yr04-05/english/panels/hg/minutes/hg050103.pdf
Council meeting	5 January 2005	Hansard http://www.legco.gov.hk/yr04-05/english/counmtg/hansard/cm0105ti-translate-e.pdf
Financial Affairs Panel	19 January 2005	Minutes http://www.legco.gov.hk/yr04-05/english/panels/fa/minutes/fa050119.pdf
Housing Panel	21 January 2005	Minutes http://www.legco.gov.hk/yr04-05/english/panels/hg/minutes/hg050121.pdf
Council meeting	1 June 2005	Hansard
Housing Panel	21 June 2005	LC Paper No. CB(1) 1787/04-05(05) http://www.legco.gov.hk/yr04-05/english/panels/hg/papers/hg0621cb1-1787-5-e.pdf

Housing Panel		LC Paper No. CB(1) 2256/04-05(01) http://www.legco.gov.hk/yr04-05/english/panels/hg/papers/hgcb1-2256-1-e.pdf
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