

立法會
Legislative Council

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Panel on Housing

Meeting on 10 May 2016

**Updated background brief on "Link's management of
retail and car-parking facilities divested by
the Hong Kong Housing Authority"**

Purpose

This paper summarizes the views and concerns expressed by Members regarding the management by Link Asset Management Limited ("Link")¹ of retail and car-parking facilities divested by the Hong Kong Housing Authority ("HA").

Background

2. According to the Administration, to enable HA to focus on fulfilling its mission to provide subsidized public housing and to improve HA's financial position in the short-to-medium term with proceeds from divestment, HA divested 180 properties, including retail and car-parking facilities, through The Link Real Estate Investment Trust ("Link REIT") in 2005.

3. In July 2005, the Court of Final Appeal ("CFA") affirmed that to secure the provision of retail and car-parking facilities did not mean that HA needed to be the direct provider itself, but HA secured the provision of such facilities so long as such facilities were available, even though they were not provided by HA but by a third party. In reaching its conclusions, CFA noted that Link would adopt a market-oriented commercial approach in operating the retail and car-parking facilities.

¹ The Link Management Limited announced on 19 August 2015 that "The Link Real Estate Investment Trust" had been renamed "Link Real Estate Investment Trust", and "The Link Management Limited" renamed "Link Asset Management Limited".

4. As a private entity, Link is entitled to rights over its properties but has to comply with the relevant law and the conditions of government leases. If Link wishes to change the land use specified in a relevant government lease, it has to obtain prior agreement from other owners of the lots concerned (such as HA) as well as approval of the Lands Department. Irrespective of whether the retail and car-parking facilities are owned by Link or not in future, the land use condition in the lease remains effective and must be observed by any successors in title.

5. According to the Administration, the assignment deeds between HA and Link contain certain restrictive covenants which stipulate that if Link and any future owners dispose of the retail and car-parking facilities, the subsequent owners shall also comply with the relevant restrictive covenants. The restrictive covenants also require Link and its successors in title to continue to let out the existing units operating social welfare and educational facilities in shopping centres at concessionary rent to non-profit making organizations. With the above mechanisms in place, changes in the management and control of the relevant properties would not affect the commercial, social welfare and educational uses of such facilities.

Deliberations by the Panel on Housing

6. The Panel on Housing ("the Panel") has been closely following Link's management of the facilities divested by HA, particularly regarding matters relating to people's livelihood and services that residents could use in the communities concerned. Views and concerns expressed by members are summarized in ensuing paragraphs.

Rental increase in Link's facilities

7. At the joint meeting of the Panel and the Panel on Manpower on 5 June 2006, members called on Link to continue with the concessionary rent arrangement for certain facilities, such as clinics, to meet the needs of public rental housing ("PRH") tenants; and to allow temporary use of venues by non-profit making bodies for holding community activities.

8. When the Panel discussed the divestment of retail and car-parking facilities of HA again on 4 January 2007, members reiterated their concerns about the high rental increases in respect of Link's shopping centres and market stalls, and whether social welfare organizations could continue to benefit from concessionary rents. They opined that the Administration should play an active role to ensure that these shopping centres and market stalls could continue to meet the needs of PRH tenants, and provide them with services and goods at affordable prices.

Provision and management of retail and car-parking facilities

9. At the meeting on 16 December 2008, Link briefed the Panel on its rental strategies and approach. Some members pointed out that the decision to divest retail and car-parking facilities was wrong from the start. The hefty increase in the rents of retail and car-parking facilities after divestment had not only affected the livelihood of retailers, many of whom had been forced out of business, but also tenants of public housing estates. Notwithstanding, Link had declined the repeated calls for reducing rents on the ground that it was held accountable to its shareholders. They stressed that the Administration should not be absolved from the management of retail and car-parking facilities within HA's public housing estates even after the divestment. To resolve the problem, the Government should seriously consider buying back the shares of Link.

10. The Panel held a special meeting on 28 September 2009 to discuss the progress of transfer of the legal titles of the divested facilities to Link. Members were concerned that Link REIT might sell some of the less profitable divested properties if it was allowed to sell the properties upon legal transfer of titles. Given that the retail and car-parking facilities were divested to Link REIT at a very low price and without going through a public tender, Link was obliged to ensure provision of adequate services to estate residents. To this end, there might be a need for the Administration to audit the accounts of Link REIT.

11. When the provision and management of the divested retail and car-parking facilities was discussed by the Panel on 16 April 2010, members expressed grave concern about the high average annual rental increase of 7.3% over a three-year lease period despite the negative growth in patronage in the divested retail facilities. This was at variance with Link's undertaking at the time of listing that it would not increase the rents if the patronage traffic and sales revenue had not increased correspondingly. Members pointed out that the high rents had not only forced many commercial tenants to move out from Link's shopping centres, but also driven up the retail prices of goods, thus increasing the cost of living of the residents of PRH estates.

Disposal of properties

12. Members discussed Link's announcement to put up five divested retail facilities for private tender at the Panel meeting on 3 June 2014. Members were gravely concerned that this marked the beginning of Link's work to get rid of unprofitable business. The new owners might also increase the rents of the retail facilities and the burden would be passed on to the public housing residents. There was also a concern that the properties might be converted to other uses, hence depriving the residents' access to convenient retail facilities.

Members criticized the Administration for not preventing Link from disposing of the divested facilities, and urged the Administration to conduct a comprehensive assessment on the divested retail and car-parking facilities, such as the changes in their rental level, and take remedial actions.

13. The Panel discussed Link's plan for converting Tin Yiu Market into a shopping complex at its meeting on 7 December 2015. Members criticized Link for failing to consult HA on its conversion plan which would seriously affect the market service currently available to residents of Tin Yiu Estate. Members considered that HA had an undeniable responsibility of ensuring the continued provision of market services to residents under the Housing Ordinance (Cap. 283) even after the divestment. HA should not dodge behind the excuse that it could not interfere with Link's commercial decisions for reason that Link was a private entity. The Panel passed two motions at the meeting urging HA to, inter alia, increase the number of commercial units and provide temporary stalls at public housing estates to minimize the impact of the closure of the existing market facilities by Link on residents. The wording of the motions is in **Appendix I**.

Questions raised and motion moved at Council meetings

14. Hon WONG Kwok-hing, Hon Alice MAK Mei-kuen, Hon LEUNG Che-cheung, Dr Hon Fernando CHEUNG Chiu-hung, Hon CHAN Han-pan and Hon Alan LEONG Kah-kit raised questions related to the management of the divested retail and car-parking facilities in public housing estates by Link at various Council meetings. Hon LEUNG Kwok-hung moved a motion on "Buying back the shares of The Link" at the Council meeting of 21 November 2012. The motion was negated. Details of the Council questions and motion are hyperlinked in **Appendix II**.

Latest development

15. In her letter dated 1 March 2016², Hon Alice MAK Mei-kuen expressed concern about Link's closure of market facilities divested by HA and its tactic of forcing small retailers out of business through converting some markets to sell high-end products. She suggested that the Administration be invited to a Panel meeting to discuss the suggestion of increasing the number of commercial units and setting up holiday bazaars in PRH estates managed by HA.

² LC Paper No. CB(1)629/15-16(01)

16. In her another letter dated 16 March 2016³, Hon Alice MAK Mei-kuen requested that the Administration be invited to a Panel meeting to discuss the recent cases concerning operators of welfare and educational facilities at a retail facility being imposed excessive charges by the owner who had purchased the retail facility concerned from Link (the retail facility was originally divested to Link by HA).

17. The above matters will be discussed at the Panel meeting scheduled for 10 May 2016.

Relevant papers

18. A list of the relevant papers is in **Appendix II**.

Council Business Division 1
Legislative Council Secretariat
4 May 2016

³ LC Paper No. CB(1)703/15-16(01)

Panel on Housing

**Motions passed under agenda item V
"Conversion of Tin Yiu Market into shopping complex by
Link Asset Management Limited"
at the meeting on 7 December 2015**

1. That the Panel on Housing of the Legislative Council strongly requests the Hong Kong Housing Authority to increase the number of commercial units in Tin Yiu Estate, so as to minimize the impact of the closure of the existing market by Link on the residents.

Moved by : Hon Alice MAK Mei-kuen
Seconded by : Hon LEUNG Che-cheung

2. That the Panel on Housing of the Legislative Council strongly condemns Link for failing to attend this Panel's meeting to participate in the discussion of the agenda item on the closure of Tin Yiu Market, opposes the closure of Tin Yiu Market by Link without consulting the residents, and requests the Housing Department to honour its undertaking of ensuring that no livelihood facilities will be closed or reduced arbitrarily by Link and to consider the use of temporary stalls to provide services to residents.

Moved by : Hon LEE Cheuk-yan
Seconded by : Dr Hon Fernando CHEUNG Chiu-hung,
Hon Albert CHAN Wai-yip

**Link's management of retail and car-parking facilities divested by
the Hong Kong Housing Authority**

List of relevant papers

Council/ Committee	Date of meeting	Paper
Panel on Housing	21 June 2005	Administration's paper ((CB(1)1787/04-05(05))) Background brief ((CB(1)1787/04-05(04))) Minutes of meeting ((CB(1)2157/04-05))
Panel on Housing	20 October 2005	Administration's paper ((CB(1)2349/04-05(01))) Background brief ((CB(1)62/05-06(01))) Minutes of meeting ((CB(1)574/05-06))
Panel on Housing	9 May 2006	Administration's paper ((CB(1)1396/05-06(06))) Background brief ((CB(1)1396/05-06(07))) Minutes of meeting ((CB(1)1858/05-06))
Panel on Housing	5 June 2006	Administration's paper ((CB(1)1632/05-06(01))) Background brief ((CB(1)1643/05-06(04))) Minutes of meeting ((CB(1)2209/05-06))
Panel on Housing	4 January 2007	Administration's paper ((CB(1)562/06-07(03))) Background brief ((CB(1)562/06-07(05))) Minutes of meeting ((CB(1)1235/06-07))
Panel on Housing	16 December 2008	Administration's paper ((CB(1) 378/08-09(07))) Background brief ((CB(1)378/08-09 (08))) Minutes of meeting ((CB(1)668/08-09))
Panel on Housing	28 September 2009	Administration's paper ((CB(1)2661/08-09(02))) Background brief ((CB(1)2661/08-09(03))) Minutes of meeting ((CB(1)380/09-10))
Panel on Housing	16 April 2010	Administration's paper ((CB(1)1575/09-10(05))) Background brief ((CB(1)1575/09-10(06))) Minutes of meeting ((CB(1) 2014/09-10))
Panel on Housing	3 June 2014	Administration's paper ((CB(1)1533/13-14(02))) Minutes of meeting ((CB(1)192/14-15))

Council/ Committee	Date of meeting	Paper
Panel on Housing	7 December 2015	Administration's paper ((CB(1)230/15-16(06))) Background brief ((CB(1)230/15-16(07))) Minutes of meeting ((CB(1)492/15-16))

Hyperlinks to relevant Council Questions:

Date of meeting	Council Question
9 November 2011	Council question raised by Hon WONG Kwok-hing
12 November 2014	Council question raised by Hon Alice MAK Mei-kuen
11 November 2015	Council question raised by Hon LEUNG Che-cheung
16 March 2016	Council question raised by Hon Fernando CHEUNG Chiu-hung Council question raised by Hon CHAN Han-pan
13 April 2016	Council question raised by Hon Alan LEONG Kah-kit

Hyperlink to relevant Member's Motion:

Date of meeting	Member's Motion
21 November 2012	Motion moved by Hon LEUNG Kwok-hung