

立法會
Legislative Council

LC Paper No. CB(1)833/04-05
(These minutes have been seen
by the Administration)

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Panel on Housing

**Minutes of special meeting
held on Monday, 22 November 2004 at 4:30 pm
in the Chamber of the Legislative Council Building**

Members present : Hon CHAN Kam-lam, JP (Chairman)
Hon LEE Wing-tat (Deputy Chairman)
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon James TO Kun-sun
Hon CHAN Yuen-han, JP
Dr Hon YEUNG Sum
Hon Abraham SHEK Lai-him, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Albert CHAN Wai-yip
Hon Frederick FUNG Kin-kee, JP
Hon WONG Kwok-hing, MH
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon CHEUNG Hok-ming, SBS, JP
Hon Patrick LAU Sau-shing, SBS, JP

Members absent : Hon Fred LI Wah-ming, JP
Hon LEUNG Yiu-chung
Hon Albert Jinghan CHENG

Public officers attending : Mr Michael M Y SUEN, GBS, JP
Secretary for Housing, Planning and Lands

Mr C M LEUNG, JP
Permanent Secretary for Housing, Planning and Lands
(Housing)

Mr Kenneth MAK, JP
Deputy Director of Housing
(Corporate Services)

Mr Albert LEE
Assistant Director of Housing
(Commercial Properties)

Mr Jim BAIRD
Legal Adviser
Clifford Chance

Clerk in attendance : Miss Odelia LEUNG
Chief Council Secretary (1)4

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Ms Sarah YUEN
Senior Council Secretary (1)6

Ms Christina SHIU
Legislative Assistant

Action

- I **Divestment of Housing Authority's retail and car-parking facilities****
(LC Paper No. CB(1)276/04-05(01) - Information paper provided by
the Administration
LC Paper No. CB(1)276/04-05(02) - Background brief on divestment
of Housing Authority's retail
and car-parking facilities
prepared by the Legislative
Council Secretariat)

The Chairman explained that the meeting was arranged to enable the Administration to update the Panel on the latest progress of the divestment of the Housing Authority (HA)'s retail and car-parking facilities (the RC facilities) through the establishment of a Real Estate Investment Trust (The Link REIT). He reminded members not to seek sensitive information in relation to the listing of The Link REIT on the Stock Exchange of Hong Kong through an Initial Public Offering (IPO).

2. Mr Tommy CHEUNG Yu-yan declared interests as member of HA and Member returned by the functional constituency of catering. He stated that he voted against the divestment at the relevant meeting of the HA.
3. Members noted the following papers tabled at the meeting –
 - (a) Press release of the Concern Group on Divestment of Housing Authority's Retail and Car-parking Facilities; and
 - (b) Letter from Mr Albert Jinghan CHENG concerning the RC facilities.

(Post-meeting note: The above papers were circulated to members vide LC Paper No. CB(1)311/04-05 on 23 November 2004.)
4. The Secretary for Housing, Planning and Lands (SHPL) briefed members on the Administration's paper and explained the need for the Administration not to divulge detailed information about the IPO at this stage owing to legal considerations.

Transparency of the divestment exercise

5. Whilst acknowledging that certain information concerning IPO might be sensitive, Mrs Selina CHOW LIANG Shuk-yee and Mr LEE Wing-tat did not consider that this was a valid reason for not disclosing any information. Mr LEE further stressed the importance of enhancing the transparency of the divestment exercise to assure the commercial tenants of the RC facilities (the commercial tenants) that the divestment would be to their benefits. In response, the Permanent Secretary for Housing, Planning and Lands (Housing) (PSH) elaborated that according to the listing regulations, the listing details of any company should not be disclosed prior to publication of the relevant prospectus. He assured members that all details about The Link REIT including the operation strategy and policy directions of The Link Management Limited (The Link Management) would be available in the relevant prospectus. The Link REIT would also be subject to the Code on REIT published by the Securities and Futures Commission to ensure proper corporate governance featuring high transparency.
6. In response to Mr LEE Wing-tat, PSH clarified that road shows to promote the IPO of companies could only be conducted after publication of the prospectus. At the Chairman's invitation, he also confirmed that it was a legal requirement not to disclose the listing details before publication of the relevant prospectus.
7. Mr LEUNG Kwok-hung found it unacceptable that the Panel was withheld full details on The Link REIT, making it unable to properly monitor the divestment of the RC facilities, which were public assets. Messrs Abraham SHEK Lai-him and WONG Kwok-hing expressed similar views. In response to Mr

LEUNG on whether the Panel could exercise the powers conferred by section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to order the Administration to provide the relevant information, Assistant Legal Advisor 6 (ALA6) advised that if authorized by a resolution of the Council, the Panel could exercise the powers.

8. In response, PSH emphasized that he was already trying his best to answer members' questions where permissible under the listing regulations. He fully recognized and respected LegCo Members' monitoring role and was ready to provide more details to the Panel after the prospectus was published. He pointed out that since the RC facilities were property of the HA, the divestment decision was made according to HA's normal procedures. The Chairman also explained that LegCo had in principle given the go-ahead to the divestment in 2003. Thereafter, a Supervisory Group on Divestment (SGD) with representatives from various sectors including LegCo Members was set up by the HA to oversee the exercise. The Panel had also been briefed on the progress of the divestment on various occasions. LegCo did monitor the divestment exercise. He could understand that according to the listing regulations, the Administration was bound by the restrictions on disclosure of details.

9. Mr LEUNG Kwok-hung was not convinced. He pointed out that the provision of more information on The Link REIT was necessary because after its listing, LegCo Members would not be able to monitor the operation of the Link Management to ensure proper operation of the RC facilities and safeguard the interests of the commercial tenants. In response, PSH reiterated that he would answer members' questions as much as he could at the meeting, and convey members' concerns to The Link Management. He could not disclose detailed information on The Link REIT prior to its IPO as this might be interpreted as a promotional act, which was strictly prohibited under the listing regulations.

10. Mr LEE Wing-tat referred to the many press reports on the operation strategy of The Link Management, and questioned why the Administration could disclose information to the press but not LegCo. He asked whether the Administration would be willing to discuss with the Panel after publication of the prospectus and before IPO regarding how the concerns of the commercial tenants could be addressed. PSH replied in the affirmative and repeated the points made in paragraph 5 above. He regretted that details of The Link REIT were reported in the press. In reply to Mr LEE, he reported that the Administration had not met with any fund managers or economic analysts regarding The Link REIT except to brief them. Mr LEE expressed regrets that the Administration considered it necessary to brief the economic analysts but not LegCo on The Link REIT. Such selective disclosure of information inevitably gave rise to discontent.

Valuation of the RC facilities

11. Mr Abraham SHEK asked for details of the valuation of the RC facilities to assess whether their full market value were deliberately underestimated to provide a higher yield for investors. In response, PSH explained that according to legal advice, disclosure of the valuation details at this stage would be problematic in the light of local and overseas listing regulations. He further explained that the final listing price of The Link REIT would be determined by the market. Potential investors would make decision whether to buy units of The Link REIT on the basis of the expected yield and income stream and not the valuation.

12. Mr Abraham SHEK reiterated request for details of the valuation. PSH assured members that the HA had already made every effort to ensure independent valuation of the RC facilities. The relevant details would also be made available in the prospectus.

13. Mr Albert CHAN Wai-yip stated his objection to the divestment. In his view, the RC facilities were sold at a low price at the expense of taxpayers' money as in the case of the development of the West Kowloon Cultural District and the Harbour Fest. According to him, the RC facilities were worth \$120 billion. However, the valuation was conducted behind closed doors. One of the personnel involved, the Chief Executive Officer (CEO) of The Link Management, also had a notorious track record and questionable integrity. Mr CHAN was gravely concerned about the credibility of the valuation. He considered that the Panel should not accept the HA's divestment plan before specific details on the valuation and arrangements were available.

14. The Chairman reminded Mr Albert CHAN to be fair to the CEO of The Link Management, who was not present at the meeting to respond to Mr CHAN's allegations. In response, Mr CHAN questioned the appropriateness of the Chairman chairing this meeting on grounds that there would be conflict of interests because the Chairman was a member of HA and had played a role in making the decision relating to the divestment. In response, the Chairman categorically pointed out that there was no conflict of interests at all and no pecuniary interests involved. PSH also clarified that the valuation was conducted by an independent valuation company and there would be full disclosure of details of The Link REIT in the prospectus. He further stressed that the objective of the divestment was in line with the principle of "big market, small government".

15. Mr Albert CHAN said that the valuation quoted by him could be worked out through simple arithmetic with regard to the market price of the RC facilities. He opined that LegCo should play a role in monitoring how decisions relating to the divestment and the relevant arrangements and valuations were made. It was undesirable that the relevant details were withheld until the IPO. In response, PSH reiterated the points he made in paragraph 8 above and stressed that extensive consultation with the stakeholders on the divestment had already been conducted. Moreover, the divestment had also been widely debated in the community. Last

but not least, detailed information about The Link REIT would be disclosed in the prospectus.

Commercial tenants' concerns and requests

16. Mrs Selina CHOW declared interests as the Convenor of the Concern Group on Divestment of Housing Authority's Retail and Car-parking Facilities and highlighted the following major requests of the Group –

- (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 adapting to the new tenancy arrangements introduced after the listing of The Link REIT.

17. Mrs Selina CHOW pointed out that the HA and The Link Management had yet to indicate whether the requests of the commercial tenants would be acceded to. She stressed the importance of assuring the commercial tenants that there would be smooth transition because many conditions of tenancy were not included in the tenancy agreements but were HA's tenancy policy. She called upon the HA and The Link Management to positively respond to the commercial tenants' requests. Pointing out that the commercial tenants' tenancy agreements with the HA would be divested together with the RC facilities, Mr Frederick FUNG Kin-kee also sought details on how their concerns could be addressed.

18. In response, PSH reported that there were ongoing consultation and communication with the commercial tenants to address their concerns. However, the HA was not in a position to make any undertaking on behalf of The Link Management and the latter would negotiate the renewal of tenancy agreements with the commercial tenants on the merits of individual cases. One of the objectives of divestment was to enable the HA to focus its valuable resources on its core function as the provider of subsidized public housing in Hong Kong and to upkeep the principle of "big market, small government". It was hoped that after the RC facilities were divested, operational efficiency would be enhanced to benefit both the residents and the commercial tenants concerned. He believed The Link Management would strive to maintain good business partnership with the commercial tenants like the HA did, and would adopt a positive approach in negotiating tenancy renewal.

19. Mrs Selina CHOW called for more specific and concrete assurances to the commercial tenants in recognition of their important role in providing necessary

services to public housing tenants at reasonable prices. Miss CHAN Yuen-han and Mr Tommy CHEUNG Yu-yan shared her views. Pointing out that being a commercial entity, The Link Management's considerations might be very different from those of the HA, Miss CHAN expressed concern that the HA's current tenancy policy might not be continued. In particular, she considered it important that the HA should secure an undertaking from The Link Management to accede to the commercial tenants' request in paragraph 16(a) above because some of the commercial tenants were offered the tenancy as compensation for clearance of their shops in cottage areas or old public rental housing (PRH) estates years ago. Mr CHEUNG also made the following points –

- (a) The HA was the best retail property and carpark facility owner in Hong Kong. The commercial tenants were therefore worried about any changes in the ownership of the RC facilities, in particular about the security of tenancy;
- (b) The requests of the commercial tenants were reasonable and Members of the Liberal Party saw a need for more concrete and positive response to their requests so as to create a win-win situation to ensure a smooth transition;
- (c) Although both the HA and The Link Management were willing to listen to the views and concerns of the commercial tenants, they seemed to pass the buck to each other. Concrete actions had to be taken to address their concerns, in particular during the transitional period; and
- (d) It was necessary to retain the present arrangement under which the commercial tenants could terminate tenancy with four months' notice.

20. In response, PSH reiterated his undertaking to convey commercial tenants' requests to The Link Management and made the following points –

- (a) Although The Link Management enjoyed flexibility in renewing tenancy agreements, in order to maintain a high occupancy rate of the RC facilities, The Link Management would negotiate renewal of tenancy renewal, taking into account commercial principles and the needs of the tenants concerned; and
- (b) After the RC facilities were divested, their legal title would be transferred to The Link Management which would then have full control over the facilities. Thereafter, the HA would not be in a position to interfere into the operation of the divested facilities or tenancy policy of The Link Management.

21. Miss CHAN Yuen-han was unconvinced of the Administration's explanations. Quoting the case of the listing of the MTR Corporation, she maintained that certain conditions could be imposed on The Link Management.

22. Mr Frederick FUNG also opined that it was inadequate for the HA to just convey the concerns of the commercial tenants to The Link Management for consideration. In reply to Mr FUNG on whether any of the commercial tenants' concerns would be included in the prospectus to ensure follow-up, PSH pointed out that he could not disclose details of the prospectus at this stage. Mr FUNG found the answer unsatisfactory.

23. In this regard, the Chairman commented that the most important thing was to continue communication among the tenants, the HA and The Link Management. Miss CHAN Yuen-han, however, disagreed with him and said that communication would serve little purpose if both the HA and The Link Management declined to make any undertaking. The Chairman pointed out that the CEO of The Link Management was positively considering tenants' requests. He would urge The Link Management to keep up positive dialogue with the tenants.

24. PSH shared the views of the Chairman, and added that communication should be close, regular, long-term and comprehensive. He further pointed out that it was also the wish of the HA and The Link Management to achieve a win-win situation. While The Link Management had a need to retain existing commercial tenants, the commercial tenants also needed to form a partnership with The Link Management. With both parties eager to achieve an agreement on how the concerns could be addressed, he believed all hiccups could be cleared in due course.

25. Mr Tommy CHEUNG stressed the need to clearly indicate to the commercial tenants in a timely manner whether their requests would be acceded to, so that they could decide early on whether they would stay in the RC facilities. In reply, PSH stated that while the HA and the CEO of The Link Management would be glad to discuss with the commercial tenants, how the RC facilities would be managed should be determined by The Link Management. He believed that since The Link Management would enjoy greater flexibility, it should be better placed to positively respond to the requests of the commercial tenants and bring in improvements in the operational efficiency of the facilities.

26. Dr YEUNG Sum said that Members of the Democratic Party supported flexible utilization of public assets and in principle did not object to the divestment. However, they considered it important that the concerns of the commercial tenants, in particular about rent increase and security of tenancy, should be properly addressed. To minimize the impact of the divestment, Dr YEUNG asked the HA to work out and agree with The Link Management on certain conditions to ensure the reasonable expectations of existing tenants could be met.

27. In reply, PSH advised that special arrangements would be made for certain categories of tenants. For example, at present certain non-profit making social service facilities and kindergartens were charged concessionary rents and this arrangement would continue. Moreover, the tenancy and rents of the some 240 premium tenants would not be affected by the divestment.

28. Whilst acknowledging these arrangements, DR YEUNG Sum urged the Administration to go further and consider exempting existing commercial tenants from new arrangements, if any, to be introduced by The Link Management. In response, PSH commented that this would run contrary to the principle of running the RC facilities on a commercial basis through the divestment. He further clarified that in general the HA was charging the RC facilities at market rents because they were essentially commercial premises leased to tenants on a commercial basis. There had not been any form of subsidy by public money. It was also inappropriate to impose any condition on how The Link Management should manage the RC facilities. He however reaffirmed his undertaking to convey members' requests and views to The Link Management for consideration. He also assured members that as he understood, the CEO of The Link Management was actively considering the requests of the commercial tenants.

Staffing matters

29. Mr WONG Kwok-hing enquired about the implications of the divestment on the staff of the Housing Department (HD) and how these would be mitigated. In reply, the Deputy Director of Housing (Corporate Services) (DD of H(CS)) elaborated that altogether 650 civil servants in HD would be affected by the divestment. The HD would gainfully redeploy them to other duties such as estate management, and there would not be any forced redundancy of civil servants arising from the divestment. Moreover, a voluntary exit scheme (VES) for civil servants affected by the divestment had also been offered and priority approval for VES applications would be given to those employed by The Link Management. During the two-month application period ending 18 September 2004, 156 civil servants in HD had applied for the VES. Ninety would leave the civil service subject to their employment by The Link Management. Ten of these applicants had joined The Link Management so far. All applications would be processed by 31 December 2004 to facilitate The Link Management's recruitment drive. An additional 48 staff of HD not eligible for VES had joined The Link Management.

30. In reply to Mr WONG Kwok-hing on impacts of the divestment on HA's contract staff and measures to assist them, DD of H(CS) confirmed that redeployment opportunities were also explored for the HD contract staff affected by the divestment. He however pointed out that the restructuring of HD would affect civil servants and contract staff alike. He assured members that in addition to redeployment, all possible measures were considered to mitigate the impact, for example, by introducing more flexible contract terms to enable job sharing. He pointed out that inevitably the employment contracts of certain contract staff

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would not be renewed if there was insufficient work to support the retention of the posts concerned. However, they would be assisted to find employment elsewhere. In fact, a scheme had been worked out to offer assistance to outgoing contract staff to better equip them through training for the job market, and to recommend them to prospective employers where appropriate. Some success was seen. At Mr WONG's request, DD of H(CS) agreed to provide the exact number of HD contract staff affected by the divestment and details of the assistance provided to them.

Consultation

31. Mr Frederick FUNG opined that in addition to meeting with commercial tenant groups, the HA should also meet with individual small tenants of the RC facilities. In response, PSH reported that the HA had commenced an extensive consultation exercise immediately after the decision in July 2003 to divest its RC facilities. Apart from sending out leaflets to all commercial tenants and other concerned parties to inform them of the key features and timetable of the divestment project, the HA had met with over ten commercial tenant groups to explain the decision to them and listen to their views. The HA had also updated the commercial tenant groups on the progress of divestment from time to time, and met with them to further follow up their respective concerns. The HA had also proactively sent out the above leaflets to all district council (DC) members and, upon the request of individual DCs such as Tuen Mun DC, Southern DC, Sha Tin DC and Eastern DC, the HA sent representatives to attend their meetings to brief them on the divestment project and listen to their views. Moreover, SGD members met with two different groups of commercial tenants on 19 October 2003. The Panel was briefed on the divestment on several occasions. The CEO of The Link Management had met commercial tenant groups more than ten times to discuss issues of concern.

32. PSH further pointed out that the operation strategy and tenancy policy of The Link REIT would be elaborated in the prospectus. Should the commercial tenants have any views, they could discuss them with The Link Management. In its effort to enhance the asset value and operational efficiency of the RC facilities, The Link Management would actively consider the views with an aim to foster a close partnership with the commercial tenants.

33. Mr Frederick FUNG found the above reply unsatisfactory. He enquired whether any open consultation meetings or other channels would be available for individual commercial tenants to voice their views. In reply, PSH pointed out that as elaborated in the preceding paragraph, leaflets on the divestment had already been sent out to all commercial tenants and other concerned parties. They should be well aware of the divestment and could voice their views where necessary. Moreover, meetings with the commercial tenant groups could also ensure effective and comprehensive consultation. He did not agree that consultation must be done on an individual basis.

Other views and concerns

34. Mr LEE Wing-tat sought information on availability of measures to prevent a single corporation from buying up the majority of REIT units to have a majority vote in the board of The Link Management and hence determine its policy. In response, PSH said that the Code on REIT had stringent requirements on what a REIT must and must not do. For example, a REIT must distribute not less than 90% of its profits to investors; a REIT could not engage in property development; and a REIT could not engage in speculative property buying and selling activities. To some extent these measures might provide a disincentive for a single corporation from taking over The Link REIT. In addition, there would be measures built into the trustee deed of The Link REIT to minimize the risk of the board of The Link Management being controlled by any single unit holder.

35. In reply to Mr WONG Kwok-hing, PSH confirmed that existing tenants and residents of the estates concerned would continue to enjoy priority in renting divested parking facilities. As to Mr WONG's question on whether increase in parking fees could be kept to the minimum, PSH confirmed that there was already an undertaking not to increase the parking fees until the end of June 2005. Noting the information, Mr WONG expressed concern that the fees might be drastically increased thereafter. In response, PSH opined that it was only appropriate that The Link Management should be given a free hand to decide its tenancy policy and the parking fees having regard to market conditions.

36. Mr Albert CHAN pointed out that the RC facilities had been performing an important function of assisting small shop operators to survive in the face of keen competition with large corporations. He was concerned that after the divestment, there would be a possibility of monopoly or oligarchy of the RC facilities by a limited number of big operators, especially those of big names. He further pointed out that the rental income from the RC facilities was a major source of recurrent cash flow to the HA without which the HA would incur deficit in the long run. PSH noted his views.

Motion

37. Mrs Selina CHOW agreed that the CEO of The Link Management was positive in addressing commercial tenants' concerns. She however pointed out that their concerns could not be mitigated unless and until there were concrete and specific indications of how the HA and The Link Management would deal with them, in particular their concern about tenancy renewal and how rental levels would be adjusted. She requested the HA to work out with The Link Management concrete measures and proposed to move a motion in this regard. Mr Albert CHAN said that HA should also be urged to put the listing arrangements on hold until a consensus had been reached between The Link Management and the commercial tenants. Taking into account Mr Albert CHAN's view, Mrs Selina CHOW proposed to move the following motion:

“本會促請房委會與‘領匯’共同盡快於‘領匯’上市前與租戶切實商討具體過渡安排，包括租務政策，以確保商戶不須受租金飆升之苦，甚至因此而結業，而居民亦不會因此而要承擔加價的惡果。在‘領匯’與租戶達成共識前房委會應擱置上市安排。”

“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.”

38. Mrs Selina CHOW’s proposed motion was seconded by Miss CHAN Yuen-han.

39. Mr Albert CHAN declared interests that his office was located in HA’s retail facilities. In response to Mr Albert CHAN, ALA6 advised that according to the Rules of Procedure, only pecuniary interests had to be declared.

40. The Chairman put the motion to vote. Except the Chairman who did not exercise the voting right, seven members present voted for the motion. The Chairman declared that the motion was carried.

II Any other business

41. There being no other business, the meeting ended at 6:45 pm.