

By fax: 2175 1900

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21 July 2006

Mr Paul CHENG Ming Fun, JP
Chairman of the Board of Directors
The Link Management Limited
4/F, Wong Tai Sin Shopping Centre
Multi-Storey Car Park Building
Lower Wong Tai Sin Estate
Shatin Pass Road
Kowloon

Dear Mr CHENG,

Panel on Financial Affairs

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

Thank you for your reply of 25 May 2006.

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

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

To facilitate the Panel to fix the date of the meeting, the Chairman would like to invite you to suggest some possible dates in September or October 2006 on which you would be available to attend the meeting. I should be grateful if you would advise me of the possible dates **by 31 August 2006**.

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

Please note that when addressing the Panel, you and any other representatives of The Link will not be covered by the protection and immunity provided under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382). The written response provided will also not be covered by the Ordinance. In accordance with our normal practice, the written response may be made available to the media and public and placed in the Library of the Legislative Council unless you raise objection. It may also be made available on the website of the Council on the Internet.

Yours sincerely,

(Miss Salumi CHAN)
Clerk to Panel

Encl.

c.c. Hon Bernard CHAN, GBS, JP (Chairman)
Hon James TO Kun-sun
Secretary for Housing, Planning and Lands (Fax: 2537 5139)
Mr Kenneth MAK, JP, Deputy Director (Corporate Services),
Housing Department (Fax: 2762 1110)
Secretary for Financial Services and the Treasury (Fax: 2147 3873)

} w/o encl.

LegCo Panel on Financial Affairs

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

List of further questions for the written response of Mr Paul CHENG

Mr Paul CHENG, Chairman of the Board of Directors of The Link Management Limited (The Link), is invited to provide written response to the following questions (Questions 1 to 5 are raised by Hon James TO in his letter dated 29 June 2006 attached (LC Paper No. CB(1)1900/05-06(04)):

1. While Mr Paul CHENG has served as a remunerated adviser to Deutsche Bank (DB) since 1 April last year, the Administration indicated in its reply (LC Paper No. CB(1)1627/05-06(03)) that it did not know until April this year that Mr CHENG had been receiving remuneration for serving as an adviser to DB. The details which Mr CHENG disclosed to Mr C M LEUNG, the former Permanent Secretary for Housing, Planning and Lands (Housing) (PSH), when notifying the latter of his adviser position with DB are therefore material information for judging whether Mr CHENG has deliberately concealed the fact or misled Mr LEUNG when seeking the latter's approval for his acceptance of the appointment as an adviser to DB. In this regard, Mr CHENG is invited to respond to the following questions:
 - (a) What information did Mr Paul CHENG convey to Mr C M LEUNG about his advisory role with DB during their conversation which took place "after the board of directors of LML had approved the appointment of Mr Paul Cheng as chairman with effect from 1 April [2005], but before the issue of the formal appointment letter to Mr Paul Cheng"? Did it include the fact that the position was remunerated? Did it include details of the work to be performed by the holder of the adviser post?
 - (b) Had Mr CHENG been aware that his position as adviser to DB was a remunerated one prior to his conversation with Mr C M LEUNG?
 - (c) In connection with item (b), if Mr CHENG had, did he inform Mr LEUNG in any way of the fact that his adviser position was a remunerated one during that conversation or subsequently before he formally signed the

Acceptance of Appointment? If he did, when and how did he do so? Was the amount of the remuneration included in the information? If he did not, why not?

- (d) In connection with item (b), if Mr CHENG had, did he inform all Board members of The Link in any way of the fact that his adviser position was a remunerated one during that conversation or subsequently before he formally signed the Acceptance of Appointment? If he did, when and how did he do so? Was the amount of the remuneration included in the information? If he did not, why not?
 - (e) In connection with item (b), if the answer is in the negative, when was Mr CHENG aware that his adviser position was a remunerated one? Did he inform Mr LEUNG and all Board members of The Link after he became aware of it? If he did, when did he inform the Administration and The Link of it? If he did not, why not?
2. According to the reply of The Link to Hon James TO (LC Paper No. CB(1)1627/05-06(04)), Mr CHENG informed the Board of Directors of The Link about his remuneration as DB's adviser on 5 January this year.
- (a) Did Mr CHENG formally provide relevant information on his adviser position with DB, including the details of his work and he was remunerated for the work as adviser, to all Board members of The Link between March last year when he obtained Mr C M LEUNG's approval for his appointment as adviser to DB and the end of last year when the incident was reported by the press (i.e. on 7 December)?
 - (b) If he did, when and how was such information provided, and what was included? Did it include the fact that the adviser position was a remunerated one and the nature of the post? If he did not, why not?
 - (c) In Mr CHENG's view, after he became aware that the adviser position with DB was a remunerated one, did he provide sufficient information to the Administration and all Board members to facilitate their understanding of the nature of his appointment as a remunerated adviser to DB, as well as their considering whether any conflict of interest might arise from such appointment, and whether it was proper for him to keep his chairmanship of The Link?

3. If Mr CHENG had been aware that the adviser position with DB was a remunerated one when he sought approval from Mr LEUNG for such appointment but did not disclose this fact to Mr LEUNG, was Mr CHENG deliberately misleading Mr LEUNG to make him misunderstand the nature of his adviser position in the absence of sufficient information and give approval for Mr CHENG to take up both appointments at the same time? Otherwise, why did Mr CHENG fail to inform Mr LEUNG of this important piece of information?
4. In his reply to the questions raised by Hon James TO (LC Paper No. CB(1)1627/05-06(05)), Mr CHENG indicated that there was no conflict of interest between his role as Chairman of The Link and being an adviser to DB. When Mr CHENG accepted the appointment as adviser to DB, did he know that DB had applied for, and was allocated, a certain amount of units in the first Initial Public Offering (IPO) of The Link Real Estate Investment Trust (The Link REIT) in 2004, and that this was an indication of DB's interest in making investment in The Link? If he did, was he worried that, given his dual role, his neutrality would be queried by the public, in particular other investor institutions which would also apply for units of The Link REIT?
5. In his reply to the questions raised by Hon James TO, Mr CHENG pointed out that since DB was not involved in The Link REIT IPO and did not provide any service to The Link, the question of conflict of interest did not arise despite his dual role. However, Mr CHENG indicated in his reply that his dual role did not contravene The Link's criteria in assessing the independence of a non-executive director as set out in Appendix 4 to its Corporate Governance Policy, which is drawn up with reference to Rule 3.13 of the Listing Rules.
 - (a) Is it Mr CHENG's view that even an independent non-executive director may have "conflict of interest"?
 - (b) In connection with item (a), does Mr CHENG agree that although his role as a remunerated adviser to DB did not contravene the requirements in respect of the independent non-executive directors, there may be conflict between the interest of DB and the interest of The Link, and in that case, he as a remunerated adviser to DB will have conflict of interest?
 - (c) In connection with item (a), if it is, why does Mr CHENG form the view that he does not have any conflict of interest as he did not contravene the Corporate Governance Policy of The Link?

- (d) In connection with item (a), if it is not, what is the definition of “conflict of interest” according to Mr CHENG’s understanding?
6. In his reply dated 25 May 2006 (LC Paper No. CB(1)1627/05-06(05)), Mr Paul CHENG stated that Questions 8 to 11 set out in Hon James TO’s letter dated 2 May 2006 (LC Paper No. CB(1)1627/05-06(02)) were not applicable because there was no conflict of interest arising from his advisory role with Deutsche Bank and his responsibilities as Chairman of the Board of Directors of The Link. In this connection:
- (a) If there was no conflict of interest involved, why did Mr CHENG consult Mr C M LEUNG, the former PSH, in March 2005 about his advisory position with Deutsche Bank? and
- (b) When did Mr CHENG form the view that there was no conflict of interest involved? Did he form such a view before or after he formally accepted on 24 March 2005 the appointment as the Chairman of the Board of Directors of The Link?
7. According to the Administration’s reply dated 21 April 2006 (LC Paper No. CB(1)1352/05-06(01)), the Joint Global Coordinators (JGCs) and Financial Adviser (FA) to the Housing Authority for the Initial Public Offering of The Link Real Estate Investment Trust confirmed that they had not discussed with Mr Paul CHENG about the allocation of units to Deutsche Bank or about the tentative lists of investors set out in an appendix to the discussion paper before the meeting of the Board of Directors of The Link on 19 November 2005, other than the general criteria for categorizing investors into different tiers, which were initially discussed at a previous Board meeting. In this connection, did Mr CHENG have any form of discussions with the JGCs and/or FA about the criteria for categorizing investors into different tiers before the “previous Board meeting” and the Board meeting on 19 November 2005?



立法會 CB(1)1900/05-06(04)號文件

(只備中文本)

(信件 D)

立法會財經事務委員會主席
陳智思議員

陳議員：


跟進領匯主席鄭明訓先生身兼德意志顧問可能有利益衝突一事

就領匯主席鄭明訓先生於零五年四月一日至零六年三月三十一日期間同時身兼投資銀行德意志的亞太區顧問委員會資深顧問一事，鄭明訓先生早前的回覆，並未回答本人的以下問題，而鑑於早前政府、領匯及鄭明訓先生的回覆令公眾知悉更多資料，也因而令本人產生更多疑問，故本人希望鄭明訓先生能解答以下問題：

1. 雖然鄭明訓先生自去年四月一日已擔任德意志的受薪顧問，但政府的回覆(文件編號：CB(1)1627/05-06(03))指，直至今年四月，政府才得悉鄭先生任德意志顧問是受薪的職位，故鄭先生在知會梁展文先生關於就任德意志顧問的詳情，便是判斷鄭先生尋求梁展文先生批准其擔任德意志顧問時，有否刻意隱瞞或誤導梁先生及領匯董事會的關鍵資料。因此，本人希望鄭先生回覆以下問題：
 - (a) 鄭先生在「領匯董事會通過由(2005年)4月1日起委任鄭明訓先生為領匯董事會主席後，但在正式向鄭明訓先生發出委任書之前」，與梁展文先生的交談，告知了梁先生關於其就任德意志顧問的什麼資料？是否包括職位屬受薪一項？是否包括顧問工作的詳情？
 - (b) 鄭先生在與梁展文先生交談前，是否已得知德意志的顧問職位屬受薪職位？
 - (c) 承上題，如是，鄭先生有沒有在該次通話或其後正式簽署委任書前，以任何方式通知梁展文關於顧問職位是受薪一事？如有，鄭先生於何時、以何種方式告知梁先生此事？是否包括薪酬的數目？如否，為何鄭先生不告知梁先生此項資料？
 - (d) 承(b)題，如是，鄭先生有沒有在該次通話或其後正式簽署委任書前，以任何方式通知領匯全體董事，關於顧問職位是受薪一事？如有，鄭先生於何時、以何種方式通知領匯全體董事此事？內容是否包括薪酬的數目？如否，為何鄭先生沒有作此通告？
 - (e) 承(b)項，如該題的答案是否定，鄭先生於何時得知顧問職位屬受薪？有否在得知此資料後告知梁先生及領匯全體董事？如有，鄭先生於何時通知政府及領匯此項資料？如無，原因為何？

2. 根據領匯回覆本人的文件(文件編號 CB(1)1627/05-06(05))，鄭先生今年一月五日，才知會領匯董事會他就任德意志顧問一職屬受薪。
 - (a) 鄭先生由去年三月獲梁展文批准擔任德意志顧問至去年底報章報導此事(即十二月七日)為止，有沒有正式向領匯全體董事，提供他擔任德意志顧問的相關資料，包括工作詳情及顧問屬受薪工作?
 - (b) 如有，鄭先生於何時，以何種方式提供資料，而資料包括什麼? 是否包括顧問屬受薪職位及顧問的性質? 如無，原因為何?
 - (c) 鄭先生認為，他在得知德意志顧問屬受薪職位後，有沒有提供足夠資料，予政府及領匯全體董事，去了解他任德意志受薪顧問的性質、判斷他任德意志受薪顧問有否利益衝突，以及鄭先生是否繼續適合擔任領匯的主席?
3. 如果鄭先生在尋求梁展文先生批准他擔任德意志顧問時，已知該職位是受薪職位，卻沒有向梁先生透露。鄭先生是否刻意誤導梁先生，使其在資料不足的情況下，誤會鄭先生擔任的顧問的性質，以促使其批准鄭先生同時擔任兩職? 否則，為何鄭先生不將此重要資料告知梁展文先生?
4. 鄭先生在回覆本人的問題(文件編號：CB(1)1627/05-06(05))指，他同時擔任領匯主席及德意志顧問沒有利益衝突。鄭先生在答應德意志任顧問時是否知道，德意志銀行在零四年領匯首次上市時，曾申請領匯基金並獲分配一定數量的基金，顯示德意志有興趣投資於領匯? 如是，鄭先生有否擔心，他身兼兩職，可能會引起公眾，尤其同樣會申請基金的其他投資機構，質疑其中立性?
5. 鄭先生在回覆本人的問題時指，由於德意志沒有參與領匯首次公開招股活動，也沒有提供服務予領匯，故他身兼兩職也不存在利益衝突。然而，鄭先生在回覆時表示，他身兼兩職沒有抵觸領匯「企業管治政策(Corporate Governance Policy)」附件四關於非執行董事的獨立性的規定。而這份附件是參照上市規則 3.13 所撰寫。
 - (a) 鄭先生是否認為，獨立的非執行董事，也可能會出現「利益衝突」的情況?
 - (b) 承上題，鄭先生是否同意，他身為德意志的受薪顧問，雖然沒有抵觸獨立非執行董事的規定，但德意志的利益可能與領匯的利益有衝突，而在此情況下，他身兼德意志的受薪顧問會有利益衝突的情況?
 - (c) 承(a) 題，如是，鄭先生為何認為自己沒有抵觸領匯的「企業管治政策」，便沒有利益衝突?
 - (d) 承(a) 題，如否，根據鄭先生的理解，「利益衝突」的定義是什麼?

立法會財經事務委員會委員


涂謹申 謹啟

二零零六年六月廿九日