

Legislative Council Panel on Housing

Provision and Management of Retail and Carparking Facilities in Public Housing Estates after Divestment

Purpose

This paper briefs Members on the provision and management of retail and car-parking facilities in public housing estates after their divestment.

Relationship between the Housing Authority and The Link after Divestment

2. It was the stated objective of the Housing Authority to divest completely its ownership and control of the 180 retail and car-parking facilities in various public housing estates throughout the territory. This objective has been achieved through injection of these facilities into The Link Real Estate Investment Trust (The Link) and public listing of The Link on 25 November 2005. After divestment, The Link has become a private entity, whose business strategies and day-to-day operations are entirely independent of the Housing Authority.

The Housing Authority's Role in the Provision of Retail and Carparking Facilities under the Housing Ordinance

3. In July 2005, the Court of Final Appeal (CFA) affirmed that the divestment by the Housing Authority of its retail and carparking facilities is consistent with the Housing Authority's object, as laid down in Section 4(1) of the Housing Ordinance, "to secure the provision of housing and such amenities ancillary thereto as the Housing Authority thinks fit". CFA ruled that to secure the provision of retail and carparking facilities does not mean that the Housing Authority needs itself to be the direct provider, but the Housing Authority secures the provision of retail and carparking facilities so long as such facilities are available, even though they are provided not by the Housing Authority but by a third party. In reaching its conclusions, CFA has noted

that The Link will adopt a market-oriented commercial approach in operating the retail and carparking facilities, whereas the Housing Authority's approach may not always be in line with private sector practice, and that under The Link, there may be changes in relation to the operation of the retail and carparking facilities, including, for example, the tenant trade mix.

The Link's Management of Its Commercial Portfolio

4. The Link enjoys full autonomy in managing and operating its retail and carparking facilities. So long as The Link's operations comply with prevailing legislation, conditions of government leases, and terms of covenants and agreements made between The Link and the Housing Authority, the Government and the Housing Authority cannot intervene into The Link's day-to-day management, business strategies and mode of operation. As stated in its Offering Circular for public listing, The Link's primary focuses are on controlling operating costs and improving operational efficiency of the divested retail and carparking properties.

5. The retail and carparking facilities acquired by The Link from the Housing Authority can only be used for retail and carparking purposes as stipulated in the government leases. Such use cannot be changed without proper authorization. If The Link wishes to change the land use specified in the government lease, it has to obtain prior agreement from other owners of the lots concerned (the Housing Authority and, depending on the type of estates in question, owners of Home Ownership Scheme or Tenants Purchase Scheme flats) as well as approval of the Lands Department. Even if these facilities are sold in future, the land use condition in the lease remains effective and must be observed by any successors in title. These lease restrictions ensure continued provision of retail and carparking facilities in public housing estates to meet residents' shopping and carparking needs.