

Legislative Council Panel on Housing
Updated Information on the Provision and Management of Commercial and
Car Parking Facilities Divested by the Hong Kong Housing Authority

Purpose

At the special meeting of the Legislative Council Panel on Housing held on 28 September 2009, we briefed Members on the arrangements for the management of the commercial and car parking facilities divested by the Hong Kong Housing Authority (HA) to The Link Real Estate Investment Trust (The Link REIT). This paper updates Members on the latest situation.

Operation of The Link REIT

2. As in the case of other private organizations, The Link REIT has full autonomy in operating its commercial and car parking facilities since its listing. It may decide on the trades for its shopping centres and commercial premises as well as revise the trade mix and facility layout in response to changing circumstances. The Government and the HA cannot and will not intervene.

3. As an organization operating on commercial principles, The Link REIT, like any private entity, would suitably respond to the economic and market conditions in order to maintain its viability in the market. The scale and arrangements of the renovation and asset enhancement programmes are the commercial decisions of The Link REIT. Given that The Link REIT's shopping centres are located in public housing estates and their clientele are mainly public housing tenants, facilities under the management of The Link REIT must cater for the tenants' needs and affordability. In addition, The Link REIT has to strive to improve the operation of the facilities so as to provide the public housing tenants with the services they need.

Powers and Duties of the Deed of Mutual Covenant (DMC) Manager

4. Since the divestment of the shopping centres and car parks in 176 public housing projects to The Link REIT in late 2005, the HA has acted as the DMC manager (the Manager) in 91 of these public housing projects. For the remaining public housing projects, the Managers are appointed by the owners' corporations of the respective Home Ownership Scheme courts or Tenants Purchase Scheme (TPS) estates.

5. The HA, as the Manager, will closely monitor to ensure that The Link REIT comply with the DMCs. Should any owner breach the provisions of the DMCs, the HA shall by virtue of the powers conferred on the Manager by the DMCs take necessary measures and actions to enforce the provisions of the DMCs.

6. Notwithstanding its power to enforce the provisions of the DMCs, the Manager has no authority to interfere in how The Link REIT manages and operates the properties under its ownership including rent adjustment, trade mix and location, etc. unless the provisions of the DMCs are breached.

Management of Common Areas

7. As the Manager of these 91 public housing projects, the HA in accordance with its powers and duties under the DMCs manages the “Common Areas” of these projects, executes the provisions of the DMCs and ensures the owners’ compliance with the DMCs.

8. According to the DMCs, the owners shall share the management fees of the estate common areas in proportion to their allotted management shares. The Manager issues demand notes to the owners every month to request the payment of management fees under the DMCs. The HA raised grave concern when The Link REIT failed to pay the management fees in the majority of the housing estates for July and August 2009, and the matter was also discussed by Members at the special meeting held on 28 September 2009. The Link REIT settled all the management fees in arrears in mid-September. Nevertheless, to ensure payment of the monthly management fees at the beginning of the month, The Link REIT has since November 2009 effected payment of management fees by way of autopay. The arrangement has worked smoothly, and forestalled delay in payment due to the time needed for completing the administrative formalities.

9. At the special meeting held on 28 September 2009, Members also expressed concern about the use of recreational facilities managed by The Link REIT. According to the land leases and DMCs, for public housing projects with the HA acting as the Manager, The Link REIT should open to the tenants the recreational facilities on the rooftops or podiums of 100 shopping centres or car parks located in 57 housing estates under its management¹. HA’s frontline staff will inspect the recreational facilities on these podiums and rooftops regularly. If they notice that any facilities are not opened, they will immediately approach The Link REIT’s staff for clarification and follow up on the re-opening date. If The Link REIT has postponed the re-opening date without a reasonable explanation, the Manager may issue a warning letter as appropriate to require The Link REIT to comply with the DMC provisions. As at 31 March 2010, 5 out of 100 recreational facilities were closed for maintenance or improvement works. The HA will continue to monitor closely the progress of the works to ensure that the facilities will be re-opened under safe conditions as early as possible.

¹ The Link REIT should also open to the tenants 5 recreational facilities in 3 TPS estates. Although the HA is not the Manager for the estates concerned, the HA has written to the owners’ corporations concerned regarding these arrangements. In order to protect the tenants’ interests in using these facilities, the Housing Department’s staff, as the representatives of HA in the management committees of the owners’ corporations, will remind the management companies appointed by the owners’ corporations from time to time to monitor the availability of the venues concerned.

Transfer of Legal Titles

10. When The Link REIT was listed in November 2005, the HA transferred to it the beneficial ownership of all the 180 divested properties, including the legal title documents of 76 such properties. The rest of the divested properties are mostly vested with the HA by the Government through a vesting order under Section 5 of the Housing Ordinance. The Government will grant to the HA the land leases and DMCs of the properties concerned and subsequently the HA will transfer the legal title documents of these divested properties to The Link REIT for the completion of the necessary formalities. In its report to the Legislative Council Panel on Housing in March 2008 and to the Establishment Subcommittee under the Finance Committee of the Legislative Council in May 2008, the Administration reported that under the HA's timetable, the target completion date for the whole project was July 2010.

11. As at 31 March 2010, of the 104 properties requiring assignment of legal titles, the legal titles of 27 properties have yet to be assigned, in which the land leases of 23 of these properties were procured. The HA will liaise closely with The Link REIT and the departments concerned on the preparation of the land leases and the transfer of the legal titles, and aim to complete the work in accordance with the timetable.

Fire Safety (Commercial Premises) Ordinance

12. As with the case for other prescribed commercial premises² under private ownership, the prescribed commercial premises managed by The Link REIT have to carry out fire safety upgrading works required under the Fire Safety (Commercial Premises) Ordinance (the Ordinance) in four phases, according to the age of the premises. At the beginning of each phase, the Fire Services Department (FSD) and the Buildings Department (BD) will conduct joint inspections of the prescribed commercial premises concerned, and depending on the inspection results, issue Fire Safety Directions (Directions) to require the owner to complete the fire safety upgrading works by the deadline.

13. The Link REIT has completed the first phase and the majority of the second phase of the fire safety upgrading works. As regards the third phase, the FSD and the BD have completed joint inspections of 43 prescribed commercial premises under The Link REIT and have been issuing Directions. As for the fourth phase, the FSD and the BD commenced in March 2010 joint inspections of 38 prescribed commercial premises and 55 other commercial facilities under The Link REIT, and will issue Directions on the prescribed commercial premises as necessary to The Link REIT after inspection.

² "Prescribed commercial premises" refer to a building or part of a building with a total floor area exceeding 230m² of which is used, or is proposed to be used as bank; off-course betting; jewelry or goldsmith's business on premises that have a security area; supermarket, hypermarket or department store; or shopping arcade.

14. In dealing with the fire safety upgrading works for prescribed commercial premises managed by The Link REIT, the FSD and the BD adopt the same standards applicable to other prescribed commercial premises under private ownership. The FSD and the BD meet with The Link REIT regularly to discuss the progress of the fire safety upgrading works carried out in accordance with the requirements of the Ordinance. According to the information provided by FSD and BD, The Link REIT's progress in complying with Directions is comparable to that of other prescribed commercial premises under private ownership.

Management and Operation of the The Link REIT's Car Parks

15. According to the land leases for the car parks under the management of The Link REIT, the parking spaces therein shall not be leased to non-eligible persons other than the residents, occupiers and their bona fide guests and visitors (hereinafter collectively referred to as "non-residents"). If The Link REIT intends to let its carparking spaces to non-residents when the relevant waivers become invalid, it has to apply to the Lands Department (LandsD) for temporary waivers.

16. Upon learning from the media in early September 2009 that The Link REIT might have let carparking spaces to non-residents, the LandsD immediately discussed the issue with The Link REIT, and reiterated that the Government would take lease enforcement action and recover any waiver fees and interests should there be any violation of the user restriction on the carparks.

17. Subsequently, The Link REIT wrote to the LandsD on 28 October 2009, stating that other than a carpark (26 parking spaces were involved) for which difficulty was encountered in ceasing letting to non-residents, no more parking spaces had been let to non-residents since October 2009. Moreover, The Link REIT proposed in its letter the payment of around \$7.15 million as the retrospective waiver fees for letting more than 700 carparking spaces to non-residents up to end-September 2009. The Lands D is considering whether the retrospective waiver fees proposed by The Link REIT are reasonable.

18. Separately, The Link REIT applies to the Lands D for waivers for more than 200 private car spaces in 15 car parks. The Lands D is processing the waiver applications, including examining the information submitted by The Link REIT, obtaining additional information and consulting the departments concerned, etc. If approval-in-principle is given to the applications, the Lands D will draw up the terms and conditions of the waivers and calculate the waiver fees payable.

**Transport and Housing Bureau
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