

Legislative Council Panel on Housing

**Divestment of Retail and Carparking Facilities by
the Hong Kong Housing Authority**

Purpose

This paper provides background information on the divestment of the retail and carparking facilities by the Hong Kong Housing Authority (HA) in 2005 and relevant issues.

Divestment of Facilities

2. To enable the HA to focus on fulfilling its mission to providing subsidised public housing, and to improve the HA's financial position in the short-to-medium term with proceeds from the divestment, the HA divested 180 properties, including retail and carparking facilities, through The Link Real Estate Investment Trust (The Link) in 2005. In July 2005, the Court of Final Appeal (CFA) affirmed that the divestment by the HA of its retail and carparking facilities was consistent with the HA's object, as laid down in section 4(1) of the Housing Ordinance (Cap 283), "to secure the provision of housing and such amenities ancillary thereto as the Authority thinks fit". CFA ruled that to secure the provision of retail and carparking facilities did not mean that the HA needed to be the direct provider itself, but the HA secured the provision of such facilities so long as such facilities were available, even though they were not provided by the HA but by a third party. In reaching its conclusions, CFA noted that The Link would adopt a market-oriented commercial approach in operating the retail and carparking facilities, whereas the HA'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 relevant facilities, including, for example, the tenant trade mix.

3. Since the listing of The Link on 25 November 2005, The Link has been a private entity. The Government and the HA do not hold any shares of The Link. The business direction and day-to-day operation of The Link is entirely independent of the Government and the HA. The HA does not have any plan to further divest its commercial and carparking facilities.

The Link's Management of Its Commercial Facilities

4. As a private entity, The Link is entitled to rights over its properties just like other private property owners, and has to comply with the relevant law and the conditions of government leases (commonly known as "land leases"). The assignment deeds between the HA and The Link also contain certain restrictive covenants.

5. The land use of the relevant lots where The Link's facilities are located is stipulated in the respective government leases. 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 (depending on the type of estates in question, such other owners may be the HA and owners of Home Ownership Scheme or Tenants Purchase Scheme flats) as well as approval of the Lands Department. The lease restrictions facilitate other owners to ensure continued provision of commercial and carparking facilities in public housing estates and courts. Irrespective of whether these facilities are owned by The Link or not in future, the land use condition in the lease remains effective and must be observed by any successors in title.

6. The assignment deeds between the HA and The Link contain restrictive covenants. Generally speaking, the commercial and carparking facilities shall not be disposed except as a whole. However, if the HA no longer holds any proprietary interest in the relevant estate or the court, the restriction that the shopping centre shall not be disposed except as a whole will no longer be effective. If the HA has disposed any residential units in the relevant estate or the court, the restriction that the carparking facilities shall not be disposed except as a whole will no longer be effective.

7. To ensure the continued provision of existing social welfare and educational facilities in shopping centres for the public, the restrictive covenant requires The Link and its successors in title to continue to let out the relevant units, which had been providing such facilities, at concessionary rent to non-profit making organisations for social welfare and educational purposes.

8. In other words, changes in the management and control of the relevant properties would not affect the commercial, carparking, social welfare and educational uses of such facilities. There is already a mechanism in place to ensure the provision of such facilities.

9. Currently, the Housing Department (HD) has been maintaining communication with The Link regarding day-to-day estate management matters. In future, the HD will continue to maintain communication with the operators of relevant facilities to protect the HA's rights under the above-mentioned government leases and restrictive covenants. In addition, the HD will follow up with The Link to reaffirm the responsibility of The Link and future operators of relevant facilities under the relevant covenants. The HD will communicate with the operators, pay attention to the actual use of the properties and gather market information so as to take note of any disposal of the relevant properties and take appropriate follow-up actions.

10. The commercial facilities of The Link are located in public housing estates and their clientele are mainly public housing residents. From the commercial perspective, any operator has to cater for the preference and needs of its major target customers. In fact, independent shops and traditional trades, including grocery stores, stationery shops and Chinese medicine shops etc., are found in the shopping centres of The Link alongside new shops to serve the residents. In addition, Hong Kong is highly urbanised and has good transport network. Residents can choose to shop in other commercial facilities while shop owners can operate in different localities depending on market conditions. Meanwhile, residents' needs will keep changing and different residents have different shopping needs. In face of competition in the market, there is economic incentive for operators of shopping centres and shop owners to cater for residents' shopping needs and respond to market signals appropriately. They also have to adjust their mode of operation to keep pace with the times in order for their business to thrive. No operator can afford to ignore residents' needs and the operation of tenants and raise the rent level or change the tenant mix in a hasty manner.

Buying back The Link or its Commercial Facilities

11. It is the Government's housing policy objective to provide subsidised public housing to eligible families, in particular to provide public rental housing (PRH) to low-income families who cannot afford to rent private accommodation. The main objective of the HA in divesting its retail and carparking facilities was to enable the HA to focus its resources on discharging its function of providing PRH. The proposal to buy back The Link is not in line with the Government's policy objective. We had explained to the Legislative Council on previous occasions that any buyback would be incompatible with public interests and the principle of prudent financial management. The Government and the HA do not have any plan to buy back The Link or its commercial facilities.

12. With limited land and public resources, the Government and the HA have to prioritise and focus the resources in providing PRH to low-income households. Meanwhile, the HA will continue to provide social service facilities, such as kindergartens, community centres, study rooms in PRH estates and courts to cater for the needs of residents. Subject to availability of resources and taking into account actual circumstances, the HA may provide commercial facilities.

**Transport and Housing Bureau
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