

立法會
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Panel on Housing

Meeting on 7 December 2015

**Background brief on Link's management of
retail and car-parking facilities divested by
the Hong Kong Housing Authority**

Purpose

1. This paper summarizes the views and concerns expressed by Members regarding the management by Link Asset Management Limited ("Link")¹ of retail and car-parking facilities divested by the Hong Kong Housing Authority ("HA").

Background

2. To enable HA to focus on fulfilling its mission to provide subsidized public housing and to improve HA's financial position in the short-to-medium term with proceeds from divestment, HA divested 180 properties, including retail and car-parking facilities, through The Link Real Estate Investment Trust ("Link REIT") in 2005.

3. In July 2005, the Court of Final Appeal ("CFA") affirmed that to secure the provision of retail and car-parking facilities did not mean that HA needed to be the direct provider itself, but HA secured the provision of such facilities so long as such facilities were available, even though they were not provided by HA but by a third party. In reaching its conclusions, CFA noted that Link would adopt a market-oriented commercial approach in operating the retail and car-parking facilities.

¹ The Link Management Limited announced on 19 August 2015 that "The Link Real Estate Investment Trust" had been renamed "Link Real Estate Investment Trust", and "The Link Management Limited" renamed "Link Asset Management Limited".

4. As a private entity, Link is entitled to rights over its properties but has to comply with the relevant law and the conditions of government leases. If 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 (such as HA) as well as approval of the Lands Department. Irrespective of whether the retail and car-parking facilities are owned by Link or not in future, the land use condition in the lease remains effective and must be observed by any successors in title.

5. According to the Administration, the assignment deeds between HA and Link contain certain restrictive covenants which stipulate that if Link and any future owners dispose of the retail and car-parking facilities, the subsequent owners shall also comply with the relevant restrictive covenants. The restrictive covenants also require Link and its successors in title to continue to let out the existing units operating social welfare and educational facilities in shopping centres at concessionary rent to non-profit making organizations. With the above mechanisms in place, changes in the management and control of the relevant properties would not affect the commercial, social welfare and educational uses of such facilities.

Deliberations by the Panel on Housing

6. The Panel on Housing ("the Panel") has been closely following Link's management of the facilities divested by HA, particularly regarding matters relating to people's livelihood and services that residents could use in the communities concerned. Views and concerns expressed by members are summarized in ensuing paragraphs.

Rental increase in Link's facilities

7. At the joint meeting of the Panel and the Panel on Manpower on 5 June 2006, members called on Link to continue with the concessionary rent arrangement for certain facilities, such as clinics, to meet the needs of public rental housing ("PRH") tenants; and to allow temporary use of venues by non-profit making bodies for holding community activities. Members also expressed grave concern about Link's plan to reduce some 1 400 jobs, which might have adverse impact on non-skilled workers engaged by Link's service contractors. They urged Link to give priority to existing staff in the recruitment of customer service personnel.

8. When the Panel discussed the divestment of retail and car-parking facilities of HA again on 4 January 2007, members reiterated their concerns about the high rental increases in respect of Link's shopping centres and market stalls, and whether social welfare organizations could continue to benefit from

concessionary rents. There was also question on the "one-stop medical zone" concept ("the Concept") developed by Link, which grouped existing separated clinics and laboratories in a one-stop facility. Members found the Concept undesirable as this would cause inconvenience to patients, particularly the elderly, who presently could use the service of nearby clinics without any need to travel. Some members were of the view that the Concept was an excuse for Link to vacate premises at favourable locations to new tenants who could afford higher rents. They opined that the Administration should play an active role to ensure that these shopping centres and market stalls could continue to meet the needs of PRH tenants, and provide them with services and goods at affordable prices.

Provision and management of retail and car-parking facilities

9. At the meeting on 16 December 2008, Link briefed the Panel on its rental strategies and approach, adding that Link's interests were aligned with those of its tenants, communities, and investors. While Link would continue to exercise strong corporate and social responsibilities, it was held 100% accountable to investors. Its rent approach aimed at keeping rents competitive and to the market.

10. Some members however pointed out that the decision to divest retail and car-parking facilities was wrong from the start. The hefty increase in the rents of retail and car-parking facilities after divestment had not only affected the livelihood of retailers, many of whom had been forced out of business, but also tenants of public housing estates. Despite the repeated calls for Link to reduce rents, these had been declined on the ground that Link was held accountable to its shareholders. The situation would be further aggravated if Link sold the retail and car-parking facilities. They stressed that the Administration could not be absolved from the management of retail and car-parking facilities within HA's public housing estates even after the divestment. To resolve the problem, the Government should seriously consider buying back the shares of Link, which was part of its duty under Article 105 of the Basic Law to protect the rights of individuals to acquisition of property.

11. The Panel held a special meeting on 28 September 2009 to discuss the progress of transfer of the legal titles of the divested facilities to Link. Members were concerned that Link REIT might sell some of the less profitable divested properties if it was allowed to sell the properties upon legal transfer of titles. Given that the retail and car-parking facilities were divested to Link REIT at a very low price and without going through a public tender, Link was obliged to ensure provision of adequate services to estate residents. To this end, there might be a need for the Administration to audit the accounts of Link REIT.

Asset enhancement initiatives

12. Noting that Link would be spending a lot in refurbishing the divested retail and car-parking facilities, some members enquired if Link had consulted retailers/estate residents before introducing any changes to upgrading the retail and car-parking facilities. They pointed out that unlike rents before the divestment which were inclusive of all costs, retailers under the management of Link had to pay maintenance fees and electricity charges separately. Retailers would have no choice but to pass on the additional costs, including the increase in rents after refurbishment, to consumers. Other members held the view that Link was trying to increase its profit through rent increase and staff reduction so that its senior management could enjoy high salaries and bonuses.

13. Some members expressed concern that Link had leased out about 8 000 car-park spaces to non-residents without applying for exemptions nor paying waiver fees in accordance with the terms of the Government lease. The Link had also failed to install and upgrade fire safety installations in the retail and car-parking facilities in line with fire safety regulations. Many recreational facilities managed by Link had become dilapidated due to improper maintenance.

14. When the provision and management of the divested retail and car-parking facilities was discussed by the Panel on 16 April 2010, members expressed grave concern about the high average annual rental increase of 7.3% over a three-year lease period despite the negative growth in traffic flow in the divested retail facilities. This was at variance with Link's undertaking at the time of listing that it would not increase the rents if the patronage traffic and sales revenue had not increased correspondingly. Members pointed out that the high rents had not only forced many commercial tenants to move out from Link's shopping centres, but also driven up the retail prices of goods, the cost of which would eventually be transferred to consumers who were mainly residents of PRH estates.

Disposal of properties

15. Members discussed Link's announcement to put up five divested retail facilities for private tender at the Panel meeting on 3 June 2014. Members were gravely concerned that this marked the beginning of Link's work to get rid of unprofitable business. The new owners might also increase the rents of the retail facilities and the burden would be passed on to the public housing residents. There was also a concern that the properties might be converted to other uses, hence depriving the residents' access to convenient retail facilities. Members criticized the Administration for not preventing Link from disposing of the divested facilities, and urged the Administration to consider conducting a comprehensive assessment on the divested retail and car-parking facilities, such

as the changes in their rental level, and the need for remedial actions.

Questions raised and motion moved at Council meetings

16. Hon WONG Kwok-hing and Hon Alice MAK Mei-kuen raised questions related to the management of the divested retail and car-parking facilities in public housing estates by Link at the Council meetings of 9 November 2011 and 12 November 2014 respectively. Hon LEUNG Kwok-hung also moved a motion on "Buying back the shares of The Link" at the Council meeting of 21 November 2012. Details of the Council questions and motion are hyperlinked in the **Appendix**.

Latest development

17. In his letter dated 8 October 2015 to the Chairman of the Panel, Hon LEUNG Che-cheung requested the Administration to explain to the Panel at a meeting on matters relating to the conversion of Tin Yiu Market into a shopping complex by Link, including a further reduction in market retail facilities and the change to land use and land lease conditions that might be involved. At the Council meeting of 11 November 2015 when the Secretary for Food and Health responded to an oral question raised by Hon LEUNG Che-cheung on the issue, Members expressed dissatisfaction over the absence of the Secretary for Transport and Housing to take Members' questions from the perspective of regulating Link's disposal of the divested retail and car-parking facilities.

18. On the request of the Panel, the Administration will brief members on the conversion of Tin Yiu Market into a shopping complex by Link at the Panel meeting on 7 December 2015.

Relevant papers

19. A list of the relevant papers is in the **Appendix**.

**Link's management of retail and car-parking facilities divested by
the Hong Kong Housing Authority**

List of relevant papers

Council/ Committee	Date of meeting	Paper
Panel on Housing	21 June 2005	<p>Administration's paper (CB(1)1787/04-05(05)) http://www.legco.gov.hk/yr04-05/english/panels/hg/papers/hg0621cb1-1787-5-e.pdf</p> <p>Background brief (CB(1)1787/04-05(04)) http://www.legco.gov.hk/yr04-05/english/panels/hg/papers/hg0621cb1-1787-4-e.pdf</p> <p>Minutes of meeting (CB(1)2157/04-05) http://www.legco.gov.hk/yr04-05/english/panels/hg/minutes/hg050621.pdf</p>
Panel on Housing	20 October 2005	<p>Administration's paper (CB(1)2349/04-05(01)) http://www.legco.gov.hk/yr04-05/english/panels/hg/papers/hgcb1-2349-1-e.pdf</p> <p>Background brief (CB(1)62/05-06(01)) http://www.legco.gov.hk/yr05-06/english/panels/hg/papers/hg1020cb1-62-1-e.pdf</p> <p>Minutes of meeting (CB(1)574/05-06) http://www.legco.gov.hk/yr05-06/english/panels/hg/minutes/hg051020.pdf</p>
Panel on Housing	9 May 2006	<p>Administration's paper (CB(1)1396/05-06(06)) http://www.legco.gov.hk/yr05-06/english/panels/hg/papers/hg0509cb1-1396-6-e.pdf</p> <p>Background brief (CB(1)1396/05-06(07)) http://www.legco.gov.hk/yr05-06/english/panels/hg/papers/hg0509cb1-1396-7-e.pdf</p> <p>Minutes of meeting (CB(1)1858/05-06) http://www.legco.gov.hk/yr05-06/english/panels/hg/minutes/hg060509.pdf</p>

Council/ Committee	Date of meeting	Paper
Panel on Housing	5 June 2006	<p>Administration's paper (CB(1)1632/05-06(01)) http://www.legco.gov.hk/yr05-06/english/panels/hg/papers/hgmp0605cb1-1632-1-e.pdf</p> <p>Background brief (CB(1)1643/05-06(04)) http://www.legco.gov.hk/yr05-06/english/panels/hg/papers/hgmp0605cb1-1643-4-e.pdf</p> <p>Minutes of meeting (CB(1)2209/05-06) http://www.legco.gov.hk/yr05-06/english/panels/hg/minutes/hgmp0605.pdf</p>
Panel on Housing	4 January 2007	<p>Administration's paper (CB(1)562/06-07(03)) http://www.legco.gov.hk/yr06-07/english/panels/hg/papers/hg0104cb1-562-3-e.pdf</p> <p>Background brief (CB(1)562/06-07(05)) http://www.legco.gov.hk/yr06-07/english/panels/hg/papers/hg0104cb1-562-5-e.pdf</p> <p>Minutes of meeting (CB(1)1235/06-07) http://www.legco.gov.hk/yr06-07/english/panels/hg/minutes/hg070104.pdf</p>
Panel on Housing	16 December 2008	<p>Administration's paper (CB(1) 378/08-09(07)) http://www.legco.gov.hk/yr08-09/english/panels/hg/papers/hg1216cb1-378-7-e.pdf</p> <p>Background brief (CB(1)378/08-09 (08)) http://www.legco.gov.hk/yr08-09/english/panels/hg/papers/hg1216cb1-378-8-e.pdf</p> <p>Minutes of meeting (CB(1)668/08-09) http://www.legco.gov.hk/yr08-09/english/panels/hg/minutes/hg20081216.pdf</p>

Council/ Committee	Date of meeting	Paper
Panel on Housing	28 September 2009	<p>Administration's paper (CB(1) 2661/08-09(02)) http://www.legco.gov.hk/yr08-09/english/panels/hg/papers/hg0928cb1-2661-2-e.pdf</p> <p>Background brief (CB(1)2661/08-09(03)) http://www.legco.gov.hk/yr08-09/english/panels/hg/papers/hg0928cb1-2661-3-e.pdf</p> <p>Minutes of meeting (CB(1)380/09-10) http://www.legco.gov.hk/yr08-09/english/panels/hg/minutes/hg20090928.pdf</p>
Panel on Housing	16 April 2010	<p>Administration's paper (CB(1)1575/09-10(05)) http://www.legco.gov.hk/yr09-10/english/panels/hg/papers/hg0416cb1-1575-5-e.pdf</p> <p>Background brief (CB(1)1575/09-10(06)) http://www.legco.gov.hk/yr09-10/english/panels/hg/papers/hg0416cb1-1575-6-e.pdf</p> <p>Minutes of meeting (CB(1) 2014/09-10) http://www.legco.gov.hk/yr09-10/english/panels/hg/minutes/hg20100416.pdf</p>
Panel on Housing	3 June 2014	<p>Administration's paper (CB(1)1533/13-14(02)) http://www.legco.gov.hk/yr13-14/english/panels/hg/papers/hg0603cb1-1533-2-e.pdf</p> <p>Minutes of meeting (CB(1)192/14-15) http://www.legco.gov.hk/yr13-14/english/panels/hg/minutes/hg20140603.pdf</p>

Hyperlinks to relevant Council Questions:

Date of meeting	Council Question
9 November 2011	Council question raised by Hon WONG Kwok-hing http://www.info.gov.hk/gia/general/201111/09/P201111090209.htm
12 November 2014	Council question raised by Hon Alice MAK Mei-kuen http://www.info.gov.hk/gia/general/201411/12/P201411120452.htm
11 November 2015	Council question raised by Hon LEUNG Che-cheung http://www.info.gov.hk/gia/general/201511/11/P201511110481.htm

Hyperlink to relevant Member's Motion:

Date of meeting	Member's Motion
21 November 2012	Motion moved by Hon LEUNG Kwok-hung http://www.legco.gov.hk/yr12-13/chinese/counmtg/floor/cm1121-confirm-ec.pdf