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**Subcommittee on Issues Relating to Shopping Centres,
Markets and Carparks in Public Rental Housing Estates and
Home Ownership Scheme Estates**

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 8 January 2018**

Purpose

This paper provides background information and summarizes the discussions at meetings of the Legislative Council and its committees on issues relating to shopping centres, markets and car parks in Public Rental Housing ("PRH") and Home Ownership Scheme ("HOS") Estates.

Background

2. The Hong Kong Housing Authority ("HA") operates a portfolio of facilities to cater for the daily needs of public housing residents. According to the Administration¹, HA's commercial facilities are operated under prudent commercial principles, and the letting arrangements will be flexibly adjusted according to market needs.

Commercial/retail facilities and car parks run by the Hong Kong Housing Authority

3. In developing new public housing estates, HA will take into account relevant government policies and planning requirements to plan for the retail and carparking facilities in the estates. Factors such as the scales of the estates under planning and the provision of shopping centres, retail and carparking facilities in the vicinity will also be considered during the process. Relevant organizations, such as District Councils, will be consulted. If necessary, HA will commission consultants to carry out retail facilities studies in the planning stage to determine appropriate retail facilities

¹ The Administration's [press release](#) on "LCQ3: Management of retail facilities in public housing estates" issued on 16 March 2016

for new estates, and will also take into consideration the operational and financial viability and suitability, etc.²

4. According to the information provided by the Administration in June 2017, HA provides about 230 000 square metres of retail facilities, including markets.³ Since 1988, HA has adopted the single-operator letting arrangement for its markets. Under this arrangement, a single tenancy is awarded to an operator who will let parts of the leased area to individual stall operators, and will be responsible for the management of the whole market. From 1997, all new markets under HA have adopted the above-mentioned single-operator letting arrangement. As at May 2017, there are a total of 22 markets under HA, six of which are single-operator markets ("SOMs")⁴, while the remaining 16 markets are directly leased to individual stall operators by HA.

5. As at the end of September 2017, there are 151 car parks under HA providing a total of around 30 000 parking spaces⁵. According to the Administration⁶, HA adopts a flexible approach in letting and make conversion of parking spaces in response to changes in demand. Surplus monthly parking spaces may be converted into hourly parking spaces or the types of parking spaces that have a greater demand. Subject to the terms in the vesting orders and land leases of the estates/courts concerned, HA may seek permissions and waivers from the Town Planning Board and the Lands Department ("LandsD") for letting parking spaces to non-resident users in order to maximize the utilization efficiency of car parks and meet the evolving needs of carpark users so as to ensure the efficient use of resources.

Facilities divested by the Hong Kong Housing Authority

6. In 2005, HA divested 180 properties, including retail and car-parking facilities, through The Link Real Estate Investment Trust ("The Link") (renamed as "Link" now). According to the Administration, the objective of

² The Administration's [press release](#) on "LCQ1: The Duty of the HA to provide amenities ancillary to housing" issued on 6 December 2017

³ LC Paper No. [CB\(1\)1024/16-17\(04\)](#)

⁴ The six SOMs are Ching Long Market, Hung Fuk Market, Kwai Chung Market, Lei Muk Shue Market, Shui Chuen O Market and Tin Yan Market.

⁵ The Administration's [press release](#) on "LCQ1: The Duty of the HA to provide amenities ancillary to housing" issued on 6 December 2017

⁶ The Administration's [press release](#) on "LCQ14: Parking spaces in the carparks under the HA" issued on 21 January 2015

the divestment is to enable HA to focus on its core function of providing subsidized public housing and improve HA's financial position in the short-to-medium term with proceeds from divestment. Also, the efficiency of the commercial facilities will be enhanced under the operation of a private entity in accordance with commercial principles.

7. When handing down its judgement in 2005 on a judicial review case regarding the aforesaid sale of properties, the Court of Final Appeal ("CFA") affirmed that the divestment plan by HA was consistent with HA's objective, as laid down in section 4(1) of the Housing Ordinance (Cap. 283). Section 4(1) requires HA to secure the provision of housing and such amenities ancillary thereto as HA thinks fit for persons concerned. CFA ruled that this 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.

8. Since its listing in 2005, Link has been a private entity. According to the Administration, the Government and HA do not hold any shares of Link. The business direction and day-to-day operation of Link is independent of the Government and HA. Just like other private property owners, Link as an owner of HA's divested properties is governed by relevant laws and conditions of land leases. The assignment deeds between HA and Link also contain certain restrictive covenants. All these ensure that changes in the management or control of the divested facilities will not affect commercial, carparking, educational, social welfare and recreational uses of such facilities.

Major views and concerns expressed by Members

9. Members have expressed views and concerns on issues relating to commercial/retail facilities and car parks in public housing estates at meetings of the Legislative Council and its committees, such as the Panel on Housing. Their major views and concerns are summarised in the ensuing paragraphs.

Single-operator markets in public housing estates

10. Members opined that SOMs had not been operating effectively and the Housing Department ("HD") should conduct a comprehensive review of its policy on outsourced markets with a view to ensuring that the management and the leasing policy for HA's markets would tie in with the needs of residents. Some Members considered that the single-operator letting

arrangement resulted in incessant rise in stall rentals, and the increase in costs would ultimately shift to residents of public housing estates. There was also the suggestion that the single-operator letting arrangement should be abolished and HA should manage its markets directly.

11. The Administration advised that the purpose of implementing SOMs was to leverage on the expertise and flexible management and operation mode of the private sector, with a view to providing better shopping choices and service environment for residents. HA would normally invite those in the Client List for SOM to bid for the market in a new public housing estate six months before completion. HD would allot separate scores on the basis of bidders' past performance in market management and the rentals proposed for the leasing proposals. These two aspects carried equal weight so that selection was not merely based on the highest rentals proposed. By means of the standard terms in the tenancy agreements with single operators, HD would restrict single operators from charging stall operators fees other than rent, air-conditioning charges, rates and management fees. HD's frontline staff would carry out regular inspections of markets to ensure that single operators would comply with the requirements as stipulated in the tenancy agreements and maintain quality management services.

12. Some Members pointed out that SOM tenants had on the one hand directly operated part of the stalls in the markets, and on the other charged excessive rent on the operators of other stalls, thereby making the latter difficult to sustain their business. They expressed concern that the direct operation of stalls by SOM tenants would lead to monopoly in the supply of foodstuff in SOMs, thereby pushing up the foodstuff prices in the markets.

13. The Administration explained that even if single operators directly operated some of the market stalls instead of letting them to other stall operators, they were still required under the standard terms in the tenancy agreements to ensure that the premises were operated in the manner of a traditional market, and would provide a certain proportion of foodstuff and miscellaneous trades. To address public concerns, HA had introduced measures to restrict the scale of direct operation by a SOM tenant to an area of not more than 20% of the total internal floor area of individual stalls. SOM tenants were also required to publicly advertise lettings of the vacant market stalls.

Management of divested properties

14. Member were of the view that since its establishment in 2005, Link had ignored the affordability of the living necessities sold in its retailing facilities to grass-roots people, arbitrarily renovated shopping arcades,

significantly raised shop rentals and introduced monthly floating parking spaces, etc. in pursuit of maximum return on profits. They doubted whether HA had effectively discharged its monitoring role to ensure that Link had properly managed the divested properties, and queried whether HA had fulfilled its duty under section 4(1) of the Housing Ordinance to secure the provision of amenities ancillary to housing.

15. The Administration advised that Link as a private entity might determine its own business strategies, mode of operation and tenant mix, just like any other private entities. Nonetheless, Link had to comply with prevailing legislation, conditions of government leases, and terms of covenants in the assignment deeds between Link and HA. Appropriate measures, including legal action, would be taken if the Administration considered that there was non-compliance. As long as the relevant statutory requirements and land lease conditions were complied with, the Administration could not interfere with the owners' lawful right to use their properties. As long as Link did not breach the covenants with HA, HA could not and would not interfere with its day-to-day operation and commercial decisions, including renovating and selling its shopping arcades, leasing arrangements of car parks, etc.

Letting of car parks in public housing estates to non-residents

16. Members enquired about the mechanism put in place by the Administration to monitor compliance with land lease conditions by Link or other owners of the car parks that had been divested by HA, and questioned whether such owners had breached the land lease conditions by letting the parking spaces in the divested car parks to non-public housing residents.

17. The Administration replied that the land leases for the grant of the relevant lots by the Government to HA, and the latter's subsequent divestment of the facilities to Link, contained restrictions on the number of parking spaces to be provided and the types of vehicles to be parked in the relevant lots. Individual land leases also contained provisions stipulating that some of the parking spaces should be provided for parking vehicles of the residents or visitors of the nearby housing estates or courts. Link being the owner of the properties must comply with the lease conditions. Nevertheless, as with all land leases, owners might apply to LandsD for temporary waivers so as to waive some specified provisions of the original leases. The policy bureaux/government departments would assess the latest demand and supply situation of parking spaces and consider these temporary waiver applications.

Rental charges of parking spaces

18. Some Members pointed out that Link had repeatedly increased the monthly rentals of the parking spaces in its car parks in PRH estates, and enquired about the relevant impact on PRH tenants who needed to rent such parking spaces because of their work. Members also asked whether the monopolization of the parking spaces in the districts concerned by Link's car parks had enabled the company to substantially increase the monthly rentals of these parking spaces.

19. The Administration advised that the Government's policy on parking provision was to provide sufficient parking spaces to meet demand, but at a level which would not unduly attract potential passengers to opt for private cars in lieu of public transport. The Administration has been providing suitable number of parking spaces to meet demand in different districts through various means, including requesting developers, through the terms in land leases, to provide suitable number of parking spaces for different types of vehicles in the developments having regard to the requirements of the Hong Kong Planning Standards and Guidelines and the adjacent traffic and parking conditions; converting sites which had no immediate development plans into temporary car parks if necessary, etc. Although, just like other private property owners, Link was entitled to determine the rents of the parking spaces in its car parks, it had to consider the needs and affordability of its target customers who were mainly public housing residents, when operating its carparking facilities in order to maintain its business.

Disposal of divested properties

20. Members were concerned about the impact of Link's disposal of the HA's divested properties in recent years on the tenants of its retail facilities and public housing residents. After procuring the properties, the new property owners might increase the rents of the retail and carparking facilities and this in turn would lead to increased prices of goods and rents of carparking spaces, thereby adding to the financial burden on the public housing residents concerned. There was also the concern that the properties might be converted to other uses, hence depriving the residents of convenient retail facilities. Some Members questioned whether HA would act on behalf of the residents to take legal action in the event that any successors in title failed to provide adequate and appropriate retail and carparking facilities to meet the basic needs of the residents.

21. The Administration advised that restrictive covenants between HA and Link stipulated that, under specific circumstances, the commercial retail spaces and car-parking facilities should not be disposed of except as a whole. As long as HA still held any proprietary interest in the estate or court concerned, the restriction that the commercial facilities should not be disposed of, except as a whole, remained effective. If HA held all residential units in the estate or court concerned, the restriction that the car-parking facilities should not be disposed of, except as a whole, would remain effective. Irrespective of whether the divested facilities were owned by Link or not in future, the land use conditions in the leases would remain in force and any successors in title would be obliged to observe such conditions. Conditions in the land leases stipulated the land uses of the relevant lots. An owner who wished to change the relevant land uses needed to obtain prior agreement from other owners of the lots (including HA and owners of the residential flats) and approval by LandsD.

22. In response to some Members' view that HA should consider buying back Link for the benefit of the community, the Administration advised that the main objective of HA in divesting its retail and carparking facilities was to enable HA to focus its resources on discharging its function of providing housing. The proposal to buy back Link was not in line with the Government's policy objective, and was incompatible with public interest and the principle of prudent financial management.

Latest development

23. The Subcommittee on Issues Relating to Shopping Centres, Markets and Carparks in Public Rental Housing Estates and Home Ownership Scheme Estates will have its first meeting on 8 January 2018.

Relevant papers

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

**Subcommittee on Issues Relating to Shopping Centres,
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Home Ownership Scheme Estates**

List of relevant papers

Meeting Date	Council/Committees	Paper
3 June 2014	Panel on Housing	Agenda Minutes
21 January 2015	Council	Council question on car parks under the Hong Kong Housing Authority
28 January 2015	Council	Council question on increase in the rentals of the parking spaces under The Link Management Limited
7 December 2015	Panel on Housing	Agenda Minutes
16 March 2016	Council	Council question on management of retail facilities in public housing estates
13 April 2016	Council	Council question on car-parking facilities under Link Real Estate Investment Trust
10 May 2016	Panel on Housing	Agenda Minutes
1 June 2016	Council	Council question on compliance with the conditions in the relevant land leases by owners of car parks in public housing estates
23 November 2016	Council	Agenda Motion Progress report
17 May 2017	Council	Council question on markets outsourced by the Hong Kong Housing Authority to single operators for management

Meeting Date	Council/Committees	Paper
5 June 2017	Panel on Housing	Agenda Minutes
6 December 2017	Council	Council question on the duty of the Hong Kong Housing Authority to secure the provision of amenities ancillary to housing

Council Business Division 4
Legislative Council Secretariat
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