Motion on "Requesting the Government to overcome the 'three big mountains' in people's livelihood"
Carried at the Legislative Council meeting on 3 April 2019

Progress Report

Purpose

At the Legislative Council meeting held on 3 April 2019, the motion on "Requesting the Government to overcome the 'three big mountains' in people's livelihood" moved by Hon Alice MAK and amended by Hon KWOK Wai-keung, Hon HO Kai-ming, Hon LUK Chung-hung and Hon AU Nok-hin was carried. The wording of the motion carried is at the **Annex**.

2. This paper reports on the progress of the relevant work.

Progress

Matters relating to Link Real Estate Investment Trust (Link)

3. Like other private property owners, owners of divested properties (including Link and subsequent buyers) are governed by laws, land lease conditions and Deeds of Mutual Covenant. The Government cannot interfere with the lawful right of the divested property owners to use their properties, so long as the legal requirements and land lease conditions are complied with. Otherwise, the relevant Government departments will certainly pursue the matter seriously and take appropriate action.

4. Regarding lease conditions, the Lands Department (LandsD) will, in response to complaints, referrals or enquiries received, as well as having regard to previously identified cases of lease breaches, carry out inspection and take follow-up action in accordance with the established procedures. LandsD will take lease enforcement action if required. Where the breaches are not rectified, LandsD will consider taking further action, including registering warning letters at the Land Registry (commonly known as "imposing an encumbrance") and re-entry of land or vesting the relevant interests in The Financial Secretary Incorporated by invoking the provisions of the Government Rights (Re-entry and Vesting Remedies)

Ordinance (Cap. 126).

5. In view of the additional resources allocated for land enforcement last year, LandsD has consolidated existing and additional resources to establish a Special Duties Task Force comprising over 100 staff members to enhance coordination, monitoring and implementation of land enforcement such as land control, squatter control, lease enforcement and so on over the territory. Given the massive number and wide distribution of the Hong Kong Housing Authority's (HA's) divested commercial facilities, it will be difficult for LandsD to actively carry out regular inspection. Taking into account the severity of alleged breaches and priorities of different tasks, LandsD will carry out targeted follow-up action on complaints, including those concerning alleged breaches of lease conditions by owners of the divested commercial facilities.

6. Furthermore, assignment deeds between HA and divested property owners contain certain restrictive covenants, including retail covenants, carparking covenants, welfare-letting covenants and split-ratio covenant. These restrictive covenants remain valid even if the ownership of the divested properties has changed. HA has an established mechanism in place to ensure that divested properties are covered by such covenants, even if there are changes in the ownership of some of the properties. For example, HA issues letters to remind owners about the restrictive covenants applicable to their properties. Owners will also be reminded that they are required to incorporate similar provisions in the assignment deeds upon disposal of the properties concerned. Also, HA requires new owners to execute the deeds of undertaking with HA. Upon the completion of property transactions, HA will issue letters to remind those buyers about the restrictive covenants applicable to their properties as well as other related matters.

7. HA attaches great importance to divested property owners' strict compliance with the terms in the restrictive covenants. Necessary actions will be taken immediately against any suspected non-compliance. If breaches of the terms are confirmed, HA will, depending on the circumstances, consider enforcing the terms through legal means. In this connection, HA has already reminded the divested property owners that, upon disposal of the properties concerned, if similar provisions have not been incorporated in the assignment deeds with the new buyers, or if the executed deeds of undertaking with HA have not been procured from such buyers, the vendors will remain liable for matters relating to breaches of the

covenants despite the change in property ownership.

8. HA will continue to maintain communication with stakeholders and, as and where necessary, provide assistance and respond to their enquiries, in order to facilitate the smooth implementation of various restrictive covenants. For example, in view of the earlier concern and enquiries by the public and Owners' Corporations of certain Home Ownership Scheme courts about the split-ratio covenant, HA has contacted the management companies of the 23 Home Ownership Scheme courts again to reiterate its position on the matter. Background information has also been provided to the management companies and Owners' Corporations for their reference.

9. The Government and HA have no plans to buy back Link or individual divested properties. As mentioned by the Government on a number of occasions, buying back these properties would be incompatible with public interests and the principle of prudent financial management, and inconsistent with the Government's policy objectives. Given the limited public resources, the Government and HA have to prioritise its resources and focus them on providing public housing.

10. Regarding the suggestions of regulating the divested facilities by legislation, such as the introduction of a mechanism for regulating the rate of rent increase, the right of first refusal to renew existing lease and vacancy tax, we understand that the scope of operation of the divested properties involves people's livelihood, and that the suggestions aim to address certain issues that the community has an on-going concern. However, whether the suggestions can suitably and effectively address such issues is debatable. Such suggestions may also affect the free market and fair competition system of Hong Kong. Therefore, there is insufficient basis for the Government to support the suggestions.

11. As regards the regulatory angle of the Code on Real Estate Investment Trusts (REIT Code), the statutory regulatory objectives and functions of the Securities and Futures Commission (SFC) are to ensure the orderly operation and development of our securities and futures markets, and ensure that the interests of the investors investing in financial products are appropriately protected. By drawing up the REIT Code to regulate REITs as a kind of investment product, SFC aims to safeguard the interests of investors while facilitating market development. The management company of a REIT is obliged to act in the best interests of the REIT's

unitholders. As to the potential impact on the community that may arise from a REIT's investment decisions based on commercial principle, these are beyond the regulatory scope of SFC and the REIT Code. Furthermore, the REIT Code applies to all REITs. The requirements therein and any amendments thereto cannot be tailored to an individual REIT, but should cover and cater for the development of the entire REIT market and with investor protection at its core.

12. In fact, the daily needs of residents of public housing for shopping, community services and carparking are met via different means. The Government has been making a lot of efforts in the areas as mentioned above. For instance, in terms of carparking spaces, the Government will follow the new principle of "single site, multiple uses" to provide public car parking spaces in suitable "Government, Institution or Community" facilities and public open space projects. If technically feasible, at least 1 500 public car parking spaces are expected to be provided over the next five years.

13. As for public markets, the Government is gearing up the preparation work for developing a number of new public markets. The Government will definitely press ahead at full steam with these projects as it understands that the public wish to see the early provision of new markets. At present, according to the Hong Kong Planning Standards and Guidelines, the Government will, on a case-by-case basis, consider the provision of new public markets. Relevant factors for consideration include demographic mix, community needs, availability of any public or private market facilities nearby and the number of fresh provision retail outlets in the vicinity. The actual situation of individual districts and the views of stakeholders will also be taken into account in the process.

14. Regarding the views that temporary bazaars should be set up in individual districts to cater for residents' daily shopping needs, the Government adopts an open attitude on its policies towards specific bottom-up proposals for organising bazaars. As long as such proposals will not compromise public order and safety, food safety and environmental hygiene, and will not cause obstruction to public passageways, the Food and Environmental Hygiene Department will assist the bazaar proponents to liaise with relevant Government departments to obtain permissions or apply for licences as appropriate, if the organisations concerned have identified suitable sites and obtained support from local communities and the respective District Councils.

Matters relating to the MTR Corporation Limited (MTRCL)

Fare

15. The fare adjustment mechanism (FAM) of MTRCL was introduced during the rail merger in 2007. It was extensively discussed at the Legislative Council and approved at MTRCL's shareholder's meeting after much deliberation and consideration. The FAM is legally binding and has formed part of the rail merger agreement between the Government and MTRCL, and is included in the Operating Agreement between the two parties.

16. The FAM is formulated based on open and objective data and adopts a "direct-drive formula" as basis. It sustains the financial viability of MTRCL so that on one hand it can continue to allocate resources to maintain and improve its services, while on the other hand better respond to the public concern about fares and the public's affordability. For example, the Government introduced an "Affordability-Cap" to the FAM in 2013, where the effective fare increase should not be higher than the year-on-year change in the Monthly Medium Household Income (MMHI) for the fourth quarter of the previous year. During the review of the FAM in 2017, although the value of the productivity factor was set at 0%[1], the Government requested MTRCL to offer a special annual adjustment of -0.6% outside the FAM formula to benefit all passengers. Since the rail merger (2008-2018), the average year-on-year inflation rate in Hong Kong has been 3.0% whilst the average rate of annual increase in Hong Kong Payroll Index has been 4.4%. Both are well above the average rate of annual increase of 2.6% in MTR fares over the same period.

17. As regards to the fare in 2019, the fare adjustment rate is +3.6% according to the mechanism. Taking into account the "Affordability Cap", as the MMHI value between the fourth quarter of 2017 and that of 2018 is +3.3%, which is lower than the overall fare adjustment rate based on the formula (+3.6%), the overall adjustment rate for MTR fares in 2019/20 will

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[1] Productivity is calculated on the basis of the ratio between income and cost in MTRCL's transport operation, and shared between MTRCL and the passengers. If the productivity factor value for the said calculation is negative, according to the Operation Agreement, it should be reset at zero to avoid the situation where fare increase as a result of a negative productivity factor value. During the FAM review in 2017, MTRCL has agreed to, based on the fare adjustment outcome as per the FAM formula for the six years from 2017-2018 to 2022-2023, lower its fare increase by 0.6% each year to ensure that passengers can still benefit from a moderated fare adjustment.

be capped at +3.3%. The Government understands the public concern on fare adjustment and has requested MTRCL to favourably consider providing more fare concession to the public. After discussion between the Government and MTRCL, MTRCL decided to set aside additional resources to extend the "3.3% Rebate" promotion to passenger from six months to 40 weeks, so that the fare of 5 million Octopus passengers will remain unchanged from June 2019 to early April 2020. MTRCL will continue to offer various monthly passes and related fare concessions to benefit the public.

18. The Government will continue to safeguard public interest and require MTRCL to adjust its fare according to the mechanism. At the same time, MTRCL should also respond to the public concern and offer more fare concession for passengers. The Government and MTRCL will closely monitor the implementation of the mechanism as reviewed in 2017 in 2017/18 to 2022/23 and reflect so accordingly in the next review.

19. The Government is concerned about the travelling expenses of the public and have implemented the non-means tested Public Transport Fare Subsidy Scheme since 1 January 2019. This is to implement the proposal set out in the Chief Executive's Election Manifesto to consider using the Government annual dividends received from MTRCL to reduce the burden of the grassroots on long-distance fares. According to the actual public transport expenses of the public, the average monthly subsidy of the first four months of the Scheme is about $160 million, with an average of about 2.2 million people benefiting each month. The Government will conduct the first review after about one year of implementation of the Scheme to examine its effectiveness based on actual data, its impact on the overall public transport service and its financial implications.

Monitoring of the Government over MTRCL

20. The Government has all along been following the established monitoring regime in regulating the services and projects of MTRCL, in accordance with the relevant legislation and agreements, in order to ensure that MTRCL provides safe and reliable services to the public. The Government understands that the public has high expectation on railway safety. On this, we will adopt a more proactive and enhanced regulatory system to strengthen the monitoring of MTRCL. The Electrical and Mechanical Services Department, being the statutory regulator, will increase its manpower to assess the MTRCL assets and systems in a more

comprehensive and integrated manner so as to identify potential problems of the systems at an early stage and take preventive measures to avoid railway accidents in order to ensure railway safety.

21. In light of the recent experience on the implementation of railway projects, we will study the views and recommendations in the Interim Report on the Commission of Inquiry into the Construction Works at and near the Hung Hom Station Extension under the Shatin to Central Link (SCL) project when taking forward the new railway projects. We will study related measures to strengthen project management and supervision; and enhance the communication between the Government and MTRCL.

22. In fact, some of the recommendations have been implemented for the SCL project through Highways Department (HyD)'s enhancement measures since the discovery of the issues at Hung Hom Station Extension as follows —

(a) on project supervision, the Project Supervision Committee (PSC) chaired by the Director of Highways has already started reviewing MTRCL's systemic issues relating to site supervision and communication and requesting MTRCL to report on the statistics of non-conformance reports to enhance transparency and supervision;

(b) on the role of HyD's "Monitoring & Verification (M&V) Consultant", the frequency of its site walks have been increased from quarterly to monthly for some critical contracts. The M&V Consultant has also deployed additional staff to conduct reviews on non-conformance reports issued by MTRCL to contractors, assist the Expert Adviser Team of the Transport and Housing Bureau to conduct audits on other SCL stations and monitor the opening up works under the Holistic Assessment Strategy; and

(c) on site supervision, HyD's in-house staff has started carrying out independent surprise checks to inspect if MTRCL has complied with its site supervision plan. HyD has demanded MTRCL to adopt improvement measures on site supervision and communication of the SCL Project. While HyD is discussing with MTRCL on the introduction of electronic Request for Inspection, Survey and Check (RISC) forms and the setting up of electronic central database on non-conformance reports in the SCL project, it is also actively exploring the adoption of digitised site supervision system in other transport infrastructure projects undertaken by HyD.

23. Moreover, the Government will continue to fulfill the responsibilities of the majority shareholder of MTRCL, including relaying to MTRCL the common concerns of the Government and the public about the management and operations of the Corporation through Government Directors in the MTRCL Board, and closely monitoring the overall strategy and businesses of MTRCL. The Government has requested the new Chairman and CEO of MTRCL to strengthen the corporate governance of the Corporation, promote the enhancement of services and respond to social expectation.

Mandatory Provident Fund (MPF) "offsetting" arrangement

24. Abolishing the "offsetting" of severance payment (SP) and long service payment (LSP) with the accrued benefits attributable to the employers' mandatory contributions under the MPF System, i.e. the "offsetting" arrangement, is one of the priority tasks of the current-term Government. In March 2018, the Government put forth the preliminary idea for abolishing the "offsetting" and consulted the stakeholders. After carefully considered the views of various stakeholders, the Chief Executive announced in the Policy Address in October 2018 the enhanced proposal for abolishing the "offsetting" arrangement.

25. The relevant Government bureaux and departments have embarked on the preparatory work for implementing the enhanced proposal for abolishing the "offsetting" arrangement. The Government is working with various stakeholders, including the Mandatory Provident Fund Schemes Authority, to map out the implementation details and arrangements of the related supporting measures, such as the designated saving accounts, the government subsidy scheme, etc. The Government has also commenced the preliminary work for drafting the enabling legislation, including examining the necessary amendments to be made to the related legislation, such as the Mandatory Provident Fund Schemes Ordinance, the Employment Ordinance and so on. The Government will strive to introduce the enabling bill into the Legislative Council (LegCo) in 2020, with a view to securing its passage by 2022 and implementing the arrangements for abolishing the "offsetting" two years after the passage of

the enabling legislation.

26. As regards the abolition of the "offsetting" arrangement in respect of the employees under direct or indirect employment of the Government, as far as Non-Civil Service Contract (NCSC) staff is concerned, as the Government is now working on the operational details in implementing the abolition of "offsetting" and drafting amendments to the relevant legislation, it would be more prudent for the Government to abolish the "offsetting" arrangement for NCSC staff in accordance with the amended legislation at an appropriate time after its passage by the LegCo. As regards non-skilled employees engaged by contractors of Government out-sourced services, the Government has introduced on 1 April 2019 a series of improvement measures to enhance the protection for them, including the payment of a contractual gratuity by the Government out-sourced service contractors to their non-skilled employees. SP/LSP can be offset by the contractual gratuity, and only the remainder of SP/LSP can be offset by the employee's accrued MPF benefits attributable to the employers' MPF contributions.

Chief Secretary for Administration's Office
Financial Services and the Treasury Bureau
Food and Health Bureau
Labour and Welfare Bureau
Transport and Housing Bureau
June 2019

<u>Annex</u>

Wording of the Motion on
"Requesting the Government to overcome the 'three big mountains' in people's livelihood"
Carried at the Legislative Council meeting of 3 April 2019

That, while improving people's livelihood is a key policy theme of the current-term Government, the local community has all along been plagued by 'three big mountains' in people's livelihood (i.e. Link Real Estate Investment Trust ('Link REIT'), the MTR Corporation Limited ('MTRCL'), and the offsetting mechanism for the Mandatory Provident Fund ('MPF')), which have added burden on people's livelihood; as Link REIT is not subject to the Government's restraint and monopolizes shopping arcades and markets in communities, shop and stall rents have risen substantially, and this has directly pushed up the prices of livelihood-related commodities; in the case of MTRCL, the lack of competition in railway operation and its ineffective management and works supervision have led to a decline in its service quality, and it has still increased its fares year after year under the Fare Adjustment Mechanism despite successive incidents; and the MPF offsetting mechanism has eroded employees' rights and interests over the years, significantly undermining MPF's function of providing retirement protection; the Policy Address of last year put forth a refined proposal for the abolition of the offsetting mechanism, under which the subsidy amount for employers will be substantially increased to $29.3 billion, but the refined proposal has all along failed to obtain the consensus of various parties; in this connection, this Council requests the Government to expeditiously formulate measures to overcome the 'three big mountains' in people's livelihood, so as to bring benefits to the livelihood of people from various strata, reduce their discontent, and in turn achieve social harmony; regarding the 'big mountain' posed by the MPF offsetting mechanism, the Government should expeditiously finalize the details of the refined proposal, and complete the legislative process and implement the proposal within its current term; and as the largest employer in Hong Kong, the Government should take the lead in fully abolishing the offsetting arrangement, so that the MPF benefits of all employees under direct or indirect employment by the Government will not be eroded; specific measures for counteracting Link REIT are as follows:

(1) amending the Housing Ordinance to regulate the rate of rental increase for shopping arcades and markets under Link REIT, accord priority to existing tenants for tenancy renewal, and levy a vacancy tax on units which have been left vacant for prolonged periods;

(2) constructing more public markets and public car parks and setting up bazaars in communities, so as to provide residents with options other than Link REIT facilities and in turn bring in more competition;

(3) allocating additional resources to the Lands Department for setting up a dedicated team to inspect Link REIT properties, so as to ensure that its properties comply with the land uses specified in land lease clauses and prevent Link REIT from changing the uses of shopping arcades and markets without permission;

(4) requiring Link REIT and buyers of Link REIT properties to discharge the obligations specified in the Agreement for Sale and Purchase of Properties which was signed when The Link REIT (now known as 'Link REIT') bought in assets from the Hong Kong Housing Authority, including sharing the management, repair and maintenance costs of the common areas and facilities of the relevant housing estates, so as to protect the interests of residents and small property owners of the relevant housing estates; and

(5) considering buying back the properties put up for sale by Link REIT, so as to avoid continued fragmentation of ownerships that leads to the worsening of problems such as substantial rental increases for and mismanagement of shopping arcades and markets and in turn affect people's lives;

regarding the 'big mountain' posed by MTRCL, the Government as the major shareholder in MTRCL must expeditiously reform MTRCL's existing management and operating systems, including increasing the number of government officials on MTRCL's Board of Directors, reviewing the maximum fine under the Service Performance Arrangement and its coverage, formulating afresh a reasonable and fair mechanism for fare adjustment, reducing the outsourcing of repair and maintenance works, and in the long run, considering bringing in other railway companies to increase competition, so as to enhance MTRCL's overall service quality and put in place reasonable fares, thereby restoring public confidence in railway operation; besides, concerning the financing of railway projects, the Government must comprehensively review the ‘concession approach’ and adopt the ‘ownership approach’ before completing the review, so as to reduce the problems in railway projects, such as delays, cost overruns or falsifications;

other specific proposals include:

(6) amending the Code on Real Estate Investment Trusts to stop real estate investment trusts such as Link REIT from engaging in real estate development and in turn reduce the incentives for Link REIT to divest its properties; and in the long run, exploring the enactment of legislation for regulating real estate investment trusts as a stronger way to monitor Link REIT.