

Legislative Council Panel on Housing Supplementary Information

The Legislative Council (LegCo) Panel on Housing (the Panel) discussed the issue “Link Real Estate Investment Trust's disposal of properties divested by the Hong Kong Housing Authority” at its meeting on 1 April 2019. At the meeting, Members requested the Government to provide supplementary information on a number of items. The Government now provides the relevant information as follows.

The Government’s Policy Position and Regulatory Work on the Divested Properties

2. The Government has, on multiple occasions, explained its policy position and regulatory work on commercial facilities divested by the Hong Kong Housing Authority (HA) (the divested properties) to LegCo. The relevant information is provided in the information paper¹ submitted to the Panel before the meeting on 1 April 2019.

3. As with other private property owners, the divested properties are regulated by the Government through laws and land leases. 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 actions.

Enforcement of Lease Conditions

4. For alleged breaches of lease conditions by owners of commercial facilities divested by HA, the Lands Department (LandsD) will, in response to the complaints, referrals or enquiries received, as well as having regard to previously identified cases of lease breaches, carry out inspections and take follow-up actions in accordance with the established procedures. LandsD will also take lease enforcement actions if required. If the breaches are not rectified, LandsD will consider taking further actions, 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”.

¹ LegCo Paper No. CB(1)771/18-19(05)
(<https://www.legco.gov.hk/yr18-19/english/panels/hg/papers/hg20190401cb1-771-5-e.pdf>)

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 related work on land enforcement such as land control, squatter control, lease enforcement and so on over the territory. Given the massive number and wide distribution of HA's divested properties, it will be difficult for LandsD to actively carry out regular inspections. Taking into account the severity of alleged breaches and priorities of different tasks, LandsD will carry out targeted follow-up actions on complaints, including those concerning alleged breaches of lease conditions by owners of the divested commercial facilities.

The Work of HA

6. For HA, the assignment deeds of the divested properties, depending on individual circumstances, contain certain restrictive covenants. If HA is aware of any problem on suspected breach of these covenants, HA will certainly pursue the matter seriously and take appropriate actions based on the covenants. Nevertheless, if the owners concerned do not contravene the covenants with HA, HA cannot and will not interfere with their day-to-day operations and commercial decisions.

7. HA, as one of the owners of the Public Rental Housing (PRH) estates, maintains communication with other owners on the day-to-day management of such estates to protect its rights under the Deed of Mutual Covenants (DMCs) and the restrictive covenants, and, at the same time, improve the living environment of the residents. HA would continue to monitor the ownership situation and actual usage of the relevant properties and take appropriate follow-up actions. At present, HA serves as the DMC manager in about half of the housing developments containing divested properties. The DMC manager is responsible for managing the "Common Areas and Facilities"² of the concerned projects in accordance with the authority and responsibility vested in the manager by the DMC. The DMC manager also enforces the provisions of the DMC and urges all owners to comply with the DMC, including the requirements to comply with the relevant land leases.

8. HA has come to aware of situations involving suspected breaches of DMCs and land leases from time to time. Sources of information include complaints by residents, discussions in district councils, reports by media and day-to-day property management, etc. HA, as a co-owner of these properties

² The areas for common use, occupation or enjoyment of the whole estate/court

and the DMC manager of some properties, will refer relevant cases to LandsD for investigation and follow-up actions. HA also has the right to issue warning letters to the relevant owners to request rectifications on the breaches. If such warnings are not effective, HA will consider taking appropriate legal actions in accordance with the DMCs.

9. Monitoring the compliance of the provisions in DMCs and restrictive covenants by the owners of divested properties is part of the usual duties of the Estate Management Division of the Housing Department (HD). HD does not keep statistics of the manpower for performing such duties.

Welfare-letting Covenant

10. The assignment deeds of some divested properties contain Welfare-letting Covenant which requires the owners to let certain designated commercial units at concessionary rents to non-profit making organisations³ nominated by nominating authorities (including the Social Welfare Department, Education Bureau and other Government departments, entities and organisations as notified by HA to the owners from time to time) for the operation of welfare, education and community facilities.

11. At present, there are a total of about 170 premises in the divested properties that are subject to the Welfare-letting Covenant. The number and locations of these premises are stipulated in the assignment deeds of the relevant properties. HA cannot unilaterally change the content in the deeds. The Welfare-letting Covenant has not specified the list of non-profit-making organisations that can operate in these premises. The organisations that can operate in individual premises are nominated by the relevant nominating authorities.

Split-ratio Covenant

12. Prior to the divestment of its commercial properties, HA, as the owner of these commercial facilities, had made contributions out of goodwill to the management and maintenance (M&M) expenses of applicable “specific activities” in the common areas and common facilities of certain HOS courts according to a specified ratio, having regard to the circumstances of the HOS courts and requests of the Owners’ Corporation (OCs) apart from those requirements under DMCs.

³ Charitable institution or non-profit making organisation with exemption under section 88 of Inland Revenue Ordinance

13. During the course of divesting the concerned commercial facilities in 2005, HA incorporated a Split-ratio Covenant in the assignment deeds of 23 HOS courts (including Sui Wo Court) in order to require the new owners to continue HA's goodwill arrangement in the past. The covenant specifies that the owners shall make contributions to the M&M and repair costs and expenses of "specific activities" within the common areas and facilities in accordance with the ratios as specified in the schedules to the assignment deeds.

14. The circumstances of these 23 HOS courts vary. According to the assignment deeds of the divested properties in some of these courts, the Split-ratio Covenant applies to management expenses, but it may not be the same case in other HOS courts. Regarding maintenance works, the types of such works covered by the Split-ratio Covenant differ from court to court. In general, the objective of the Split-ratio Covenant is for the subsequent owners of the divested properties to continue with the goodwill arrangements of HA prior to its divestment of properties having regard to the actual circumstances of relevant courts. The split-ratios do not apply to all M&M expenses of all common areas and facilities. Instead, they only apply to the "specific activities" of those HOS courts where HA has made contributions prior to its divestment of properties. The relevant assignment deeds have been registered in the Land Registry. Details are also shown in a paper of the HA Memorandum for the Commercial Properties Committee⁴.

15. As regards Sui Wo Court, since the formation of the current term OC in October 2018, HA has responded to the enquiries of the OC regarding issues such as the split-ratio, maintenance responsibility of the slopes, etc. HA has also met with the OC and the representatives of the current owners of the divested properties in February and April 2019 respectively to explain the arrangements under the Split-ratio Covenant of the Court.

16. Regarding the issue raised by some residents that the electricity supply of Sui Wo Court Phase II Carpark was coming from the residential portion before 2017, and the electricity fees were paid by the residents, the OC had, at the meeting with HA in April 2019, requested HA to assist in chasing the recovery of the expenses on their behalf. HA has indicated to the representatives of the OC that if they were not able to contact the ex-owner of the divested properties, i.e. Link, to put forward their claim, HA was willing to offer assistance. HA also reiterated the above position in its letter to the OC in mid-May 2019. We are aware that the OC has requested HA to take further

⁴ HA Memorandum for the Commercial Properties Committee Paper No. 18/2018 (<https://www.housingauthority.gov.hk/en/common/pdf/about-us/housing-authority/ha-paper-library/CPC18-18.pdf>)

follow-up actions in its letter to HA dated 15 May 2019. HA is currently handling this case and will provide a response to the OC in due course.

Tai Wo Hau Commercial Centre and Carpark

17. The owner of commercial centre and carpark of Tai Wo Hau Estate named 11 shops collectively as the “Community Street” since May 2018. The “Community Street” and Tai Wo Hau Community Centre are located at the same podium. Barrier-free access facilities, such as ramps, are provided along the way for the needed persons. The elderly and persons with reduced mobility can access the “Community Street” through Tai Wo Hau Road to the podium of the Tai Wo Hau Community Centre. The elderly and persons with reduced mobility can also take the lifts at Fu On House to the podium to visit the “Community Street” and Tai Wo Hau Community Centre after registration of personal information at the security counter on the ground floor.

“Canteen Service for the Elderly” of Hing Man Estate

18. The Methodist Epworth Village Community Centre (the Centre) raised an enquiry to the Hing Man Estate Office (the Estate Office) in February 2017 on the application procedures for holding an activity involving distribution of cooked food in the estate. The Estate Office explained to the Centre the procedures of using the venue for holding activities, including the need to obtain all required licences/ permits for the approved activities and the relevant regulations, rules, by-laws, etc. that they need to comply with.

19. According to HA’s record, the Centre applied to the Estate Office in March 2017 for placing leaflets of “Canteen Service for the Elderly” of the Centre at the tower guard counters at ground floor lobbies of domestic blocks of Hing Man Estate and direct delivery of above leaflets into tenants’ mail boxes. The application was approved. It is noted that the number of elderlies who use the canteen service has been increased after the distribution of leaflets. Besides, the Estate Office had informed members of Hing Man Estate Management Advisory Committee during the meeting on 6 June 2017 that there was “Canteen Service for the Elderly” of the Centre. For those tenants in need of care, the Estate Office would refer the cases to relevant government departments for appropriate assistance after consent is sought from the tenants concerned.

**Transport and Housing Bureau
May 2019**