

**Memorandum for the Commercial Properties Committee of
the Hong Kong Housing Authority**

**Split-ratio Covenant
between the Hong Kong Housing Authority and
Owners of Divested Properties**

PURPOSE

This paper reports for Members' information the recent media reports on the split-ratio covenant (the Covenant) that applies to some commercial properties the Authority (HA) divested in 2005, and the actions we have taken and will take.

BACKGROUND

2. Before the divestment exercise in 2005, all commercial facilities (including carparks) in Home Ownership Scheme (HOS) courts were owned by HA. In some of these HOS courts, HA as the owner of the commercial facilities would in response to requests by the HOS flat owners (the Incorporated Owners (IOs)) agree to make contributions to the management and maintenance (M&M) expenses of certain specified types of common areas/facilities, in addition to any contribution that HA was contractually obliged to make. HA made such additional contributions at mutually agreed ratios that applied to specified activities.

3. The Government's June 2005 paper^{Note 1} to the Legislative Council (LegCo) on the public communications, conducted in connection with the divestment exercise, noted that some resident bodies had asked for a continuation of the prevailing cost-sharing arrangement for the M&M expenses of estate common area. The response to this view was –

“The split ratios for individual estates are normally set out in the respective DMCs. For 23 cases where a different ratio has been adopted in practice, The Link has agreed to follow such split ratios when contributing to the cost and expense of the management, repair and maintenance of estate common areas and facilities. Such requirement has been stipulated in the Property Agreement.”

4. The agreement with The Link mentioned in paragraph 3 above was incorporated into the Covenant in the assignment deeds of 23 divested properties located in HOS courts. The Covenant stipulates that the purchaser shall, when demanded by the manager or the owners' corporation of the court, contribute to the cost and expense of the management, repair, maintenance, renewal and replacement (as the case may be) of common areas and facilities of the court according to the split-ratios set out in the schedules of the assignment deeds, notwithstanding the provisions of the applicable DMCs. The Covenant also binds subsequent purchasers through similar stipulations in the subsequent assignment deeds and separate undertakings in favour of HA. As examples, extracts of the Covenant together with the schedule in the assignment deeds of Sui Wo Court (SWC) and Tin Ma Court (TMC) are at **Annex A**. **Annex B** summarises the split-ratios and how they apply in respect of the 23 HOS courts. It can be seen that the Covenant applies to “specific activities”. The Covenant covers management expenses in some estates but not others. As for maintenance works, the types of such works covered by the Covenant vary from estate to estate.

5. The Covenant was also mentioned in the Offering Circular of Link REIT, as follows –

“The Property Agreement provides for a “split-ratio covenant” to be imposed on 23 List 1 Properties. By virtue of this “split-ratio

Note 1 LegCo Paper No. CB(1)1787/04-05(05)

covenant”, PropCo (and its successors and assigns) have agreed with HKHA that notwithstanding the provisions contained in the deeds of mutual covenant for such List 1 Properties, PropCo (and its successors and assigns) shall contribute to the cost and expense of the management, repair and maintenance of the common areas and facilities of the relevant Housing Estate within which each such List 1 Property forms part according to certain split-ratios previously adopted by HKHA as set out in the Property Agreement.”

6. The assignment deeds were registered at the Land Registry and have been available for public inspection.

7. Therefore, the continuation of the split ratios through the Covenant was public information in 2005 and has been public information since then. The HOS owners who had asked for the continuation of the split ratios before the divestment exercise (paragraph 3 above) were no doubt aware of the Covenant. After the divestment, we have from time to time received enquiries from IOs/management companies as well as the press regarding the Covenant or the split ratios.

ACTIONS TAKEN

8. On 22 June 2018, in response to a media enquiry, we issued a general reply on SWC at **Annex C** setting out the applicability of the Covenant and the apportionment arrangements in respect of the maintenance expenses of the common areas and facilities. Following press reports on the issue on 9 July 2018, the issue was discussed at the meeting on the same day of LegCo’s Subcommittee on Issues Relating to Shopping Centres, Markets and Carparks in public rental housing estates and HOS courts. On 9 July 2018, in response to further enquiries from the press, we issued the reply at **Annex D** outlining, among other things, the actions that HA has taken or will take to address the concerns of the IOs.

9. We have been in touch with the IOs who have raised questions about the Covenant, SWC and TMC, to follow up on their questions. We have also contacted all management companies of the 23 HOS courts again to ensure they

understand the provisions of the Covenant and the split-ratios that are applicable to their properties. We will provide assistance and answer any enquiries from such IOs/management companies as necessary.

10. We will advise IOs and the general public that HA will take the same position as it has been taking in relation to the Welfare Letting Covenant. In the case of the Welfare Letting Covenant, as reported to Members vide Paper No. CPC 9/2016 dated 21 April 2016, HA takes it seriously that all the terms of the Covenant have to be duly observed, and HA will consider taking appropriate actions as it may deem necessary in the event of any non-compliance. Should any breach be established, we may consider taking legal proceedings for enforcement.

11. The Covenant applies not only to The Link but also to subsequent owners of the divested properties. We have been taking actions with The Link and other owners of the divested properties to ensure that despite transfer of ownership of some of the properties, the properties remain covered by the Covenant. We will continue to do so.

INFORMATION

12. This paper is issued for Members' information.

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(Estate Management Division)

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Extract of the Split-ratio Covenant from the Assignment Deed of Sui Wo Court

4. The Purchaser hereby further covenants with the Vendor and its successors and assigns (to the intent that this covenant ("Split-ratio Covenant") shall bind the Property and the owner or owners thereof for the time being and other person or persons deriving title under the covenanting Purchaser (each and all of whom including the Purchaser is and are hereinafter included in the expression "Covenanting Purchaser") and shall enure for the benefit of the remaining parts of the estate or development of which the Property forms part (such estate or development, "Estate") and be enforceable by the Vendor and its successors and assigns) that:
- (i) the Covenanting Purchaser shall, when demanded by the manager or the owners' corporation of the Estate, contribute to the cost and expense of the management, repair, maintenance, renewal and replacement (as the case may be) of the common areas and facilities of the Estate according to the split-ratios set out in Schedule 2 notwithstanding the provisions of the applicable Deed of Mutual Covenant; and
 - (ii) if the Covenanting Purchaser sells or otherwise assigns the Property, the Covenanting Purchaser shall sell or otherwise assign the Property on the condition that the purchaser or assignee thereof shall enter into the same binding covenant with the Vendor or its successors or assigns in the relevant assignment and deliver to the Vendor on completion of such sale or assignment a duly executed deed of undertaking in favour of the Vendor containing such covenant on terms similar in scope and extent as the covenant (i) hereinbefore contained and this covenant (ii) to the intent that the Vendor shall be able to enforce such undertaking directly against such purchaser or assignee;

PROVIDED THAT upon the Covenanting Purchaser complying with and performing the covenant (ii) hereinbefore contained, the Covenanting Purchaser shall not be liable for any breach of the aforesaid covenant (i) hereinbefore contained which may happen after the Covenanting Purchaser shall have sold or otherwise disposed of the Property in respect whereof such purchaser or assignee shall have entered into such covenants similar in scope and extent as the covenants (i) and (ii) hereinbefore contained.

Schedule 2 from the Assignment Deed of Sui Wo Court

Schedule 2

Contributions on Management Expenses (%)			Contributions on Maintenance Expenses (%)			Remarks
OC	CP		OC	CP		
Domestic	Retail	Carpark	Domestic	Retail	Carpark	
N/A	N/A	N/A	50.8	20.2	29	

Note: Split-ratio contributions were goodwill contributions by HA in the past on specific activities, and were in addition to the monthly management fees (if any) payable under the Deed of Mutual Covenant.

Legends OC – Owners' corporation
 HA – Hong Kong Housing Authority
 CP – Covenanting Purchaser
 N/A - Not Applicable

Extract of the Split-ratio Covenant from the Assignment Deed of Tin Ma Court

4. The Purchaser hereby further covenants with the Vendor and its successors and assigns (to the intent that this covenant ("Split-ratio Covenant") shall bind the Property and the owner or owners thereof for the time being and other person or persons deriving title under the covenanting Purchaser (each and all of whom including the Purchaser is and are hereinafter included in the expression "Covenanting Purchaser") and shall enure for the benefit of the remaining parts of the estate or development of which the Property forms part (such estate or development, "Estate") and be enforceable by the Vendor and its successors and assigns) that:
- (i) the Covenanting Purchaser shall, when demanded by the manager or the owners' corporation of the Estate, contribute to the cost and expense of the management, repair, maintenance, renewal and replacement (as the case may be) of the common areas and facilities of the Estate according to the split-ratios set out in Schedule 2 notwithstanding the provisions of the Deed of Mutual Covenant; and
 - (ii) if the Covenanting Purchaser sells or otherwise assigns the Property, the Covenanting Purchaser shall sell or otherwise assign the Property on the condition that the purchaser or assignee thereof shall enter into the same binding covenant with the Vendor or its successors or assigns in the relevant assignment and deliver to the Vendor on completion of such sale or assignment a duly executed deed of undertaking in favour of the Vendor containing such covenant on terms similar in scope and extent as the covenant (i) hereinbefore contained and this covenant (ii) to the intent that the Vendor shall be able to enforce such undertaking directly against such purchaser or assignee;

PROVIDED THAT upon the Covenanting Purchaser complying with and performing the covenant (ii) hereinbefore contained, the Covenanting Purchaser shall not be liable for any breach of the aforesaid covenant (i) hereinbefore contained which may happen after the Covenanting Purchaser shall have sold or otherwise disposed of the Property in respect whereof such purchaser or assignee shall have entered into such covenants similar in scope and extent as the covenants (i) and (ii) hereinbefore contained.

Schedule 2 from the Assignment Deed of Tin Ma Court

Schedule 2

Contributions on Management Expenses (%)			Contributions on Maintenance Expenses (%)			Remarks
OC	CP		OC	CP		
Domestic	Retail	Carpark	Domestic	Retail	Carpark	
N/A	N/A	N/A	70.5	-	29.5	Confined to estate common road.
			60.8	13.8	25.4	Confined to slope.

Note: Split-ratio contributions were goodwill contributions by HA in the past on specific activities, and were in addition to the monthly management fees (if any) payable under the DMCs.

Legends OC – Owners' corporation
 HA – Hong Kong Housing Authority
 CP – Covenantee Purchaser
 N/A - Not Applicable

**List of 23 HOS Courts Subject to Split-ratio Covenant in the
Deed of Assignment for Divested Properties**

No.	HOS Court	Contributions on Management Expenses (%)			Contributions on Maintenance Expenses (%)			Remarks
		OC	CP		OC	CP		
		Domestic	Retail	Carpark	Domestic	Retail	Carpark	
1.	Ko Chun Court 高俊苑	N/A	N/A	N/A	71.8	1.2	27	Confined to slope maintenance, repair and maintenance of the lift tower leading to Ko Yee Estate.
2.	Po Pui Court 寶珮苑	76.2	-	23.8	76.2	-	23.8	
3.	Mei Chung Court 美松苑	72.8	0.8	26.4	72.8	0.8	26.4	
4.	Siu Lun Court 兆麟苑	N/A	N/A	N/A	91	2.7	6.3	
5.	Tin Yau Court 天祐苑	N/A	N/A	N/A	93.7	-	6.3	Confined to estate road only.
6.	Yue On Court 漁安苑	N/A	N/A	N/A	80	-	20	Confined to maintenance works of all slopes and estate road of the lot.
7.	King Lai Court 瓊麗苑	80	-	20	80	-	20	Confined to slope.

No.	HOS Court	Contributions on Management Expenses (%)			Contributions on Maintenance Expenses (%)			Remarks
		OC	CP		OC	CP		
		Domestic	Retail	Carpark	Domestic	Retail	Carpark	
8.	Lok Nga Court 樂雅苑	N/A	N/A	N/A	63.5	11.2	25.3	Confined to estate common road and slope. For maintenance of the plumbing system, another ratio is adopted as it also involves Lok Wah (North) Estate. The apportionment of expenses is Lok Wah (North) Estate:domestic:retail:carpark = 35.50 : 40.96 : 7.22 : 16.32.
9.	Tin Wang Court 天宏苑	91.7	0.9	7.4	91.7	0.9	7.4	
10.	Ching Wah Court 青華苑	N/A	N/A	N/A	80	-	20	Confined to electricity charges and repair of covered walkway and 2 lifts installed therein, slope, estate road (Tsing Chin Street), water main under carpark/non-domestic/domestic block and fire service facilities.
11.	Ka Tin Court 嘉田苑	N/A	N/A	N/A	70.6	-	29.4	Confined to slope.

No.	HOS Court	Contributions on Management Expenses (%)			Contributions on Maintenance Expenses (%)			Remarks
		OC	CP		OC	CP		
		Domestic	Retail	Carpark	Domestic	Retail	Carpark	
12.	San Wai Court 新圍苑	N/A	N/A	N/A	80	-	20	Confined to the section of estate road leading to carpark and slope.
13.	Po Nga Court 寶雅苑	N/A	N/A	N/A	77.1	8.2	14.7	
14.	Tong Ming Court 唐明苑	N/A	N/A	N/A	66.32	13.47	20.21	
15.	Wo Ming Court 和明苑	64.88	5.36	29.76	64.88	5.36	29.76	
16.	Tin Ma Court 天馬苑	N/A	N/A	N/A	70.5	-	29.5	Confined to estate common road.
					60.8	13.8	25.4	Confined to slope.
17.	Yin Lai Court 賢麗苑				80	5	15	Confined to slope and flushing water pumping system.
					50	50	N/A	

No.	HOS Court	Contributions on Management Expenses (%)			Contributions on Maintenance Expenses (%)			Remarks
		OC	CP		OC	CP		
		Domestic	Retail	Carpark	Domestic	Retail	Carpark	
18.	Kam Ying Court Ph.1 錦英苑(一期)	N/A	N/A	N/A	82	18	-	Confined to fire services water supply system.
	Kam Ying Court Ph. 2 錦英苑(二期)	N/A	N/A	N/A	82	18	-	Confined to fire services water supply system.
19.	Siu Hei Court 兆禧苑	64.9	10.1	25	64.9	10.1	25	Confined to electricity charges and maintenance expenses for footbridge (estate common).
20.	Ming Nga Court 明雅苑	N/A	N/A	N/A	70.1	-	29.9	
21.	Hui Lai Court 曉麗苑	75.2	5.9	18.9	75.2	5.9	18.9	
22.	Siu On Court 兆安苑	N/A	N/A	N/A	60.1	14.6	25.3	
23.	Sui Wo Court 穗禾苑	N/A	N/A	N/A	50.8	20.2	29	

Note: Split-ratio contributions were goodwill contributions by HA in the past on specific activities, and were in addition to the monthly management fees (if any) payable under the Deed of Mutual Covenant.

Legends OC – Owners’ Corporation
HA – Hong Kong Housing Authority
CP – Covenanting Purchaser
N/A – Not Applicable

HA's Response to Media Issued on 22 June 2018

就 貴查詢，房屋署發言人回覆如下：

穗禾苑位於沙田市地段第43號，包括沙田市地段第43號之餘段(RP)及沙田市地段第43號A段(SA)。沙田市地段第43號之餘段(RP) 為住宅部分，而沙田市地段第43號A段(SA)為非住宅部分，包括零售及停車場設施。

香港房屋委員會（房委會）於2005年透過領匯（現稱領展）分拆出售180項非住宅物業，當中包括穗禾苑的零售及停車場設施。這些零售及停車場設施坐落於沙田市地段第43號A段(SA)，而非第43號之餘段(RP)，其後領展再把這些設施的業權轉售予“Actmore Estate Limited”。

拆售物業的業主與一般私人物業的業主無異，須就其所持有的物業，按照相關法例，地契及其他規範性文件(如公契)的規定去承擔所需的管理及維修責任。沙田市地段第43號A段(SA)的買賣契約亦設有若干限制性契諾，包括分攤比率契諾（Split Ratio Covenant），訂明物業中共用地方及設施之管理，維修及保養費用及開支的分攤安排。

有關的分攤比率契諾仍然適用於23個屋苑。

完

HA's Response to Media Issued on 9 July 2018

就 貴查詢，房屋署發言人回覆如下：

在早前回應傳媒查詢時，我們已介紹有關一般的安排。現就傳媒進一步查詢提供以下資料。

一如一般私人房屋項目，資助出售房屋項目內公用地方的業權由所有業權人(可包括：香港房屋委員會(房委會)、商業設施業主和個別住宅單位業主等)共同擁有。這些公用地方的管理和維修保養責任亦由所有業權人共同承擔。

在 2005 年拆售商業設施前，房委會一直在居屋屋苑和租置計劃屋邨因應法團管理人的要求，按雙方同意的安排，支付共用地方及設施需負擔分攤的維修及保養費。

屋苑/屋邨成立業主立案法團後，法團從房委會接收屋苑的管理權責。房委會除了依據公契內的不可分割業權分數承擔屋苑/屋邨的日常管理維修開支外，亦有因應個別情況，按法團的要求，就公用地方及設施的工程及維修項目，按雙方同意的分攤比率分擔費用。

參考上述的安排，在 2005 年拆售商業設施時，房委會在 23 個商業設施買賣契約內訂立分攤比率契諾 (Split Ratio Covenant)，訂明商業設施日後的業主，應按房委會過去採納的若干分攤比率，承擔該房屋項目公用地方及設施註明類別的管理、維修及保養費用及開支。

這些買賣契約均已在土地註冊處登記，供公眾查閱。領匯(現稱「領展」)的上市文件亦就此契諾作出解釋。此外，政府早前已向公屋及居屋商場、街市及停車場事宜小組委員會提供多個商業設施的買賣契約，當中亦包括受分攤比率契諾規範的商業設施。

就傳媒查詢有關天馬苑的個案，相關分攤比率契諾列明兩個特定分攤比率，適用於屋苑內公用道路，以及斜坡的維修開支。房委會已接觸有關業主立案法團的管理公司，了解有關開支項目的詳情。如分攤比率契諾適用，房委會將按需要根據契諾採取適當跟進。

就有關穗禾苑的個案，房委會知悉有關的維修工程事宜，並一直注意其發展。房委會已再與業主立案法團聯絡，了解最新情況。因應業主立案法團和相關商業設施業權人商討的情況，如有需要，房委會將會根據分攤比率契諾採取適當跟進。

房委會就分攤比率契諾會再聯絡相關的業主立案法團或其管理公司。如有違反契諾的個案，房委會會嚴肅跟進，採取適當行動。如個別屋苑/屋邨的業權人就分攤比率契諾有任何疑問，房委會代表樂意提供協助及跟進。

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