

(Translation)

Due Process of Law Upheld

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Of all the comments regarding the abortive listing of Link REIT, the most unfair one has to be that the Administration meddled with the judicial process.

The listing of Link was a step taken by the Housing Authority. The Authority is not, as some believe to be the case, a department of the HKSAR Government. It is a statutory body established for the purpose of engaging the public in the provision of public housing. Only four out of the twenty-nine members of the Authority are public officials, among them is the Secretary for Housing, Planning and Land who chairs the Authority. From the outset, the Authority has been making its own decisions independently. The Administration maps out the general housing policy framework on which the Authority's decisions are based and provides secretarial support to the Authority. The Housing Department also acts as the executive arm of the Authority, and undertakes the day-to-day management of public housing estates.

The Supervisory Group on Divestment of the Housing Authority is charged with the duty of having Link listed. The Administration is represented by only one public official in the 10-member Group. The Housing Authority instructed its own lawyers in the endeavour and sought advices from senior counsel in private practice. In the legal proceedings instituted by the two housing estate tenants, the Authority was named the respondent. The Authority retained its own solicitor and counsel and gave instructions to them. The Administration has all along respected the autonomy of the Authority and was not involved in the litigation in whatsoever manner. The arguments put forward and the moves made by the Authority's legal representatives cannot be taken as the act or stance of the Administration.

Successful listing of Link bears on Hong Kong's reputation as a financial centre. Also at stake are the interests of the investing public and the tenants of public housing estates. There may be huge public financial implications if the deficit-ridden Housing Authority fails to raise the much-needed capital through the listing exercise. It would be remiss of the Government to look on. However, the deliberation at Lower Albert

Road in the critical hours was restricted to what, if at all, role could the Administration play in the last-ditch efforts to clear the obstacle encountered by the exercise which remained fairly and squarely the Housing Authority's.

In the proceedings, the legal representative of the Housing Authority called on the Court of Appeal to exercise its legal authority to abridge the period within which an appeal might be brought. The Court of Appeal was also urged to, and it did, hear the appeal at short notice. Critics remarked that the Authority bludgeoned the Judiciary into taking prompt action.

With due respect to the disapproving commentators, I do not find their views justified. Litigants are perfectly entitled to request the court to exercise its legal authority, and it would be unquestionable for the court to accede to the request if, having weighed up the conflicting interests of the parties concerned, it rules that urgent action is necessary. In 1987, the UK Government filed a law suit (*AG v. Guardian Newspapers Ltd. and others [1987] 1 WLR 1248*) against several newspapers over the publication of the book *Spycatcher* which allegedly contained classified information concerning the British intelligence service. The High Court heard the claim on 20-21 and the morning of 22 July 1987. The Court of Appeal heard the case in the afternoon of 22 July and on 23-24 July. The House of Lords heard the appeal on 27-29 July and gave judgment on July (for reasons given 2 weeks later). In another case (*Secretary of State for Education and Science v Tameside MBC [1977] AC 1014*), the UK Secretary of State for Education and Science took a local authority to court on a policy that had to be implemented in the impending school year. The Court of Appeal gave judgment on 26 July 1976. The House of Lords granted leave to appeal on 29 July. The appeal was heard on 30-31 July. On 2 August, the Lords announced that the appeal would be dismissed for reasons to be given later.

It can be seen from those precedents that a request to expedite judicial process and the court's accession thereto is nothing deplorable. Subject to there being adequate legal authority and the parties' interest being catered for, the request of the counsel acting for the Housing Authority should not be viewed negatively. The Housing Authority did nothing more than making an atypical application in an atypical situation. The Court of Final Appeal eventually ruled that neither the Court of Final Appeal Ordinance nor any other law

empowered it to abridge the appeal period and refused the application accordingly. During the whole process, all moves of the Housing Authority and all rulings of the courts were based on solid legal authority, evidencing the robustness of the rule of law. There is simply no question of the Administration interfering with the Judiciary or judicial independence being undermined.

It will be for the public to explore whether the Court of Final Appeal Ordinance should be amended to allow the Court of Final Appeal greater flexibility in dealing with the time limit for appeal. The Administration adopts an open attitude on the issue. The decision to abridge appeal period will however rest with the Court. Let there be no doubt about that.

Hong Kong has suffered in the Link incident. Besides working hard towards the ultimate resolution of the problem at hand, we should look into the nature of the incident and rid ourselves of unnecessary concerns. What we do not need is misconception of foreign investors that emanates from misunderstanding of the citizens of Hong Kong. We must be vigilant of any impairment of the rule of law which is the cornerstone of Hong Kong's success. There should also be a sound system under which law suits that must be disposed of expeditiously cannot be unduly delayed. I believe the public would expect nothing less.