

**Subcommittee on Proposed Resolutions
under Section 29 of the Public Finance Ordinance (Cap.2)
and Section 3 of the Loans Ordinance (Cap.61)**

Response to the Issue Raised at the Meeting held on 18 June 2009

Purpose

In its letter dated 18 June 2009 to the Administration, the Subcommittee on Proposed Resolutions under Section 29 of the Public Finance Ordinance (Cap. 2) and Section 3 of the Loans Ordinance (Cap. 61) (“the Subcommittee”) requested the Administration to provide further information, including examples of possible circumstances or precedent cases illustrating the uncertainty of interpretation and the associated risk of litigation, in relation to the Department of Justice’s advice against the approach of setting out of the policy objective of the Government Bond Programme (GBP) in the proposed resolution under the Public Finance Ordinance. This paper sets out the Administration’s response.

Possible problems that might be caused by setting out the policy objective of the GBP in the proposed resolution under the Public Finance Ordinance

2. Some Members of the Subcommittee requested that the policy objective of the GBP be set out in the proposed resolution under the Public Finance Ordinance. As mentioned in our papers to the Subcommittee on 15 June 2009 and 18 June 2009, and explained at the Subcommittee meeting held on 18 June 2009, it is not desirable to set out the policy objective of the GBP in the proposed resolution as it may give rise to uncertainty in interpretation of matters such as whether the policy objective stated can or will be achieved by the GBP, the Bond Fund or individual elements thereof. Such uncertainty is undesirable. Any litigation arising therefrom may adversely affect the smooth implementation of the GBP. This may also dampen investors’ interest to invest through the GBP and hence will not be conducive to the further development of the bond market in Hong Kong.

3. Smooth operation of the Bond Fund is one of the prerequisites for the timely and effective implementation of the GBP. The financial market is fast-evolving, and the timing for implementing the GBP will have a significant bearing on the cost and impact of the GBP. Any possible delay in implementing the GBP as caused by the uncertainty in interpreting the relevant provisions and the associated litigation risk might bring about additional legal and financial obligations on the Administration.

4. We consider it inappropriate to provide any hypothetical examples or case laws to illustrate under what circumstances would any uncertainty in interpretation arise or otherwise, as well as the associated litigation risk. Consideration and assessment of the relevant legal points is one of the functions of the court.

Arrangements for other funds established under section 29 of the Public Finance Ordinance

5. The Clerk to the Subcommittee wrote to Members of the Subcommittee on 19 June 2009, setting out the examples of funds established under section 29 of the Public Finance Ordinance, which contain provisions relating to the purpose(s), object(s) and use(s) of the funds, as provided by the legal advisor to the Subcommittee.

6. The nature of funds established under section 29 of the Public Finance Ordinance differs. As such, the content of provisions applicable to different funds unavoidably varies. As pointed out in our reply to the legal advisor to the Subcommittee on 19 May 2009, pursuant to section 29(1) of the Public Finance Ordinance, paragraphs (e)(i) and (e)(ii) of the proposed resolution under section 29 set out the purposes for which the Bond Fund is to be established and moneys in the Bond Fund may be expended.

Proposed approach

7. Having due regard to the views of the Members of the Subcommittee, we proposed in our papers to the Subcommittee on 15 June 2009 and 18 June 2009 to further elaborate paragraph 1 of the Explanatory Note to the relevant proposed resolutions. The Explanatory Note should be an aid to the construction of the resolutions. The relevant addition is as follows (in italic

and bold print) –

“This Resolution relates to the proposal in the 2009-2010 Budget to promote the further *and sustainable* development of the bond market in Hong Kong. *As mentioned in the Budget Speech, promoting the development of the bond market is important to reinforcing Hong Kong’s position as an international financial centre. This can provide more diversified investment products and avenues for financing to attract more overseas capital.*”

8. We consider that the above addition has already struck a reasonable balance between addressing the concern of the Members of the Subcommittee, and minimizing the uncertainty in interpreting the relevant proposed resolutions and the associated litigation risk.

9. As we have pointed out in the Subcommittee meetings earlier, the Financial Secretary will reiterate the objective of the GBP, viz. to promote the further and sustainable development of the local bond market, and the relevant arrangements, in his speeches for moving the motions for the passage of the relevant resolutions at the Legislative Council sitting scheduled for 8 July 2009. The setting up of the Bond Fund is a measure for meeting the operation need of the GBP. We shall not and cannot use any sums contained in the Bond Fund to cover government expenses. If there is a positive balance in the Bond Fund after the Government has met all financial obligations and liabilities in relation to the GBP, the surplus funds may be transferred to the general revenue only after the Legislative Council has given the approval. The draft speeches have been provided to the Legislative Council secretariat on 22 June 2009, and circulated to the Members of the Subcommittee for reference through the Clerk to the Subcommittee.

Financial Services and the Treasury Bureau
26 June 2009