

**DISCUSSION PAPER FOR THE
PANEL ON FINANCIAL AFFAIRS
PROVISIONAL LEGISLATIVE COUNCIL**

PUBLIC FINANCE ORDINANCE (CHAPTER 2)

**Resolution to amend the resolution of the
Capital Works Reserve Fund
under section 29(1) of the Public Finance Ordinance**

INTRODUCTION

The Resolution of the Legislative Council on the Capital Works Reserve Fund (CWRF) (last amended on 12 December 1996) contains provisions for the sharing of land premia between the former Hong Kong Government and the Hong Kong Special Administrative Region Government under paragraph 6 of Annex III to the Sino-British Joint Declaration on the Question of Hong Kong (JD). With the establishment of the HKSARG on 1 July 1997, these provisions no longer apply. Since then, the income from land premium has been deposited into general revenue by virtue of section 3(1) of the Public Finance Ordinance. We need to amend the resolution of the CWRF to remove the obsolete provisions on the sharing of income from land transactions and provide for such income to be credited directly to the CWRF for the purposes of funding the capital works programme.

BACKGROUND

2. The CWRF was first established by a Resolution made and passed by the Legislative Council on 20 January 1982 for the purpose of financing the Public Works Programme (PWP) and land acquisition. A copy of the Legislative Council Resolution is at Enclosure 1. The principal objective in establishing a separate CWRF at that time was to avoid substantial annual fluctuations in the General Revenue Account due to the fluctuating and lumpy nature of capital works expenditure.
3. The first CWRF Resolution was replaced by a second Resolution on 27 July 1983 following the enactment of the Public Finance Ordinance 1983. A copy of the second Resolution is at Enclosure 2.

4. The Government of the United Kingdom and the Central People's Government of China signed the Sino-British Joint Declaration in Beijing on 19 December 1984. Paragraph 6 of Annex III to the JD contained a provision concerning the sharing of land premia between the HKG and the future HKSARG for the period 27 May 1985 to 30 June 1997. To give effect to this provision, a third Resolution of the Legislative Council on the CWRP was passed on 15 May 1985. This resolution created three separate accounts, a suspense account, a works account and a reserve account, under the CWRP and provisions for transfers between the accounts for a proper accounting of the sharing of land premia. All premium income (together with interest accrued) obtained from the land transactions covered by paragraph 6 of Annex III to the JD, pending deduction of the average cost of land production and sharing in accordance with paragraph 6 of Annex III of the JD, was credited to the suspense account. After agreement on the share of land sales premium accruing to each government, the HKG's share was to be paid into the works account to meet the cost of capital works. The share belonging to the HKSARG was to be held in the Land Fund to be transferred to the HKSARG upon its establishment. Appropriations from the general revenue were paid into the reserve account. A copy of the third Resolution is at Enclosure 3.

Encl. 3

5. The third CWRP Resolution was subsequently amended three times on 13 January 1988, 6 November 1991 and 12 December 1996 to give effect to other changes to the CWRP. However, the land premia sharing arrangements laid down in the third Resolution remain unchanged. A copy of the Resolution currently in force is at Enclosure 4.

Encl. 4

6. The land premia sharing arrangement described above is now redundant with the winding up of the Land Fund on 30 June 1997 and the establishment of the HKSAR Government on 1 July 1997. Consequently, the relevant provisions of the CWRP Resolution to implement this arrangement have become obsolete. We need to amend the provisions of the CWRP Resolution in order to reflect this situation and to provide for a regular flow of income into the CWRP to finance the capital works programme.

THE RESOLUTION

7. We propose to introduce amendments to the CWRP resolution for passage by the Provisional Legislative Council on 17 December 1997. The amendments will provide that—

- (a) the Fund be administered by the Financial Secretary, who may delegate his power of administration to other public officers;

(b) there be credited to the Fund—

- (i) premium income received from land transactions;
- (ii) all moneys received arising from works or commitments entered into for the purposes of the Fund;
- (iii) unclaimed deposits in respect of moneys referred to in sub-paragraph (ii) which have been unpaid for 5 years;
- (iv) such appropriations from general revenue as may be approved by the Provisional Legislative Council or Legislative Council;
- (v) sums borrowed under section 3 of the Loans Ordinance (Cap. 61) where the resolution of the Provisional Legislative Council or Legislative Council approving the borrowing so stipulates;
- (vi) all moneys received by way of interest or dividends earned in respect of moneys held in the Fund;
- (vii) such donations and other moneys as may be received for the purposes of the Fund;

(c) the Financial Secretary may expend moneys from the Fund for—

- (i) the purposes of the Government's public works programme;
- (ii) the purchase and installation of equipment consequential on implementing the public works programme;
- (iii) the development, purchase and installation of major systems and equipment used by the Government;
- (iv) capital subventions;
- (v) the acquisition of land; and
- (vi) the payment of redemption money payable in respect of land exchange entitlements and of interest payable thereon under the New Territories Land Exchange Entitlements (Redemption) Ordinance (Cap. 495);

in accordance with such conditions, exceptions and limitations as may be specified by the Finance Committee;

(d) the Financial Secretary may —

- (i) transfer from the Fund to the general revenue any balance in the Fund which is not required for the purposes of the Fund;
- (ii) repay the principal, interest thereon and expenses incurred in relation to sums borrowed under section 3 of the Loans Ordinance (Cap. 61) where such sums have been credited to the Fund;
- (iii) in his discretion, authorise the investment in such manner as he may determine of any moneys held in the Fund at any time;

- (e) the Director of Accounting Services shall, under the authority of a funds warrant issued by the Financial Secretary, pay from the Fund such sums as may be required to meet expenditure from the Fund;
- (f) this resolution shall come into operation on a date to be appointed by the Financial Secretary by notice in the Gazette;
- (g) on the coming into operation of paragraphs (a) to (f) above, the suspense account, works account and the reserve account of the Fund shall be cancelled and any moneys remaining in those accounts shall be carried forward in their entirety in the Fund; and
- (h) paragraphs (a) to (n) of the resolution made and passed by the Legislative Council on 15 May 1985, and published in the Gazette as Legal Notice No. 131 of 1985, and any subsequent amendments made to those paragraphs shall cease to apply.

8. The key changes from the current CWRF Resolution relate to the financial arrangements set out in paragraphs 7(b)(i), 7(d)(i), 7(f), 7(g) and 7(h) above. The other provisions related to the ambit of the CWRF, as set out in paragraphs 7(a), 7(b)(ii) to 7(b)(vii), 7(c), 7(d)(ii) to 7(d)(iii) and 7(e) above are the same as the corresponding ones in the current CWRF Resolution.

9. We propose to bring these amendments to the CWRF resolution into operation on a date to be appointed by the Financial Secretary by notice in the Gazette after they have been passed by this Council. Currently, our intention is to bring the amendments into effect on 1 January 1998.

LEGISLATIVE TIMETABLE

10. We intend to move the resolution amending the CWRF at the sitting of this Council on 17 December 1997.

ADVICE SOUGHT

11. We would welcome any views and comments from Members.

Finance Bureau

File Reference : L/M to FIN CR 13/2321/87

L. S. NO. 2 TO GAZETTE NO. 3 / 1982

L.N. 18/82

L.N. 18 of 1982

CAPITAL WORKS RESERVE FUND
RESOLUTION OF THE LEGISLATIVE COUNCIL

Resolution made and passed by the Legislative Council on 20 January 1982.

RESOLVED—

- (a) that there will, with effect from 1 April 1982, be established a fund styled the Capital Works Reserve Fund;
- (b) that the Fund shall be administered by the Financial Secretary;
- (c) that there shall be credited to the Fund such appropriations from the general revenue of Hong Kong as may be approved by this Council;
- (d) that there shall accrue to the general revenue of Hong Kong all sums received by way of interest or dividends earned in respect of such unexpended balances as may be held in the Fund at any time;
- (e) that the Financial Secretary may expend moneys from the Fund for the purposes of the Government's Public Works Programme and for the acquisition of land, in accordance with such terms and conditions as are approved by the Finance Committee; and
- (f) that the Financial Secretary may from time to time transfer from the Fund to the general revenue of Hong Kong any balances in the Fund which are not required for the purposes of the Fund.

Jennie CHOK

Clerk to the Legislative Council.

COUNCIL CHAMBER.

20 January 1982.

L. S. NO. 2 TO GAZETTE NO. 30 / 1983

L.N. 250/83

L.N. 250 of 1983

PUBLIC FINANCE ORDINANCE 1983
(No. 3 of 1983)

RESOLUTION OF THE LEGISLATIVE COUNCIL
CAPITAL WORKS RESERVE FUND

Resolution made and passed by the Legislative Council under section 29(1) of the Public Finance Ordinance 1983 on 27 July 1983.

RESOLVED with respect to the Capital Works Reserve Fund established by resolution made and passed by this Council on 20 January 1982 and deemed under section 29(3) of the Ordinance to have been established in accordance with that section, that—

- (a) the Fund be administered by the Financial Secretary, who may delegate his power of administration to other public officers;
- (b) there be credited to the Fund such appropriations from general revenue as may be approved by this Council;
- (c) the Financial Secretary may expend moneys from the Fund for the purposes of the Government's public works programme and for the acquisition of land, in accordance with such conditions, exceptions and limitations as may be specified by the Finance Committee;
- (d) the Director of Accounting Services shall, under the authority of a funds warrant issued by the Financial Secretary, pay from the Fund such sums as may be required to meet expenditure from the Fund;
- (e) the Financial Secretary in his discretion may authorize the investment in such manner as he may determine of any unexpended balance held in the Fund at any time;
- (f) the Financial Secretary may from time to time transfer from the Fund to general revenue any balance in the Fund which is not required for the purposes of the Fund; and
- (g) paragraphs (b), (c), (d), (e) and (f) of the resolution made and passed by this Council on 20 January 1982 and published in the *Gazette* as Legal Notice No. 18 of 1982, which relate to the composition, expenditure and administration of the Fund, cease to apply.

Jennie CHOK

Clerk to the Legislative Council.

COUNCIL CHAMBER.

27 July 1983.

L. S. NO. 2 TO GAZETTE NO. 20 / 1985

L.N. 131/85

L.N. 131 of 1985

PUBLIC FINANCE ORDINANCE
(Chapter 2)

RESOLUTION OF THE LEGISLATIVE COUNCIL
CAPITAL WORKS RESERVE FUND

Resolution made and passed by the Legislative Council under section 29(1) of the Public Finance Ordinance on 15 May 1985.

RESOLVED with respect to the Capital Works Reserve Fund established by resolution made and passed by this Council on 20 January 1982 and published in the *Gazette* as Legal Notice No. 18 of 1982, and for the purpose of giving effect to arrangements for implementing paragraph 6 of Annex III to the Joint Declaration of the Government of the United Kingdom and the Government of the People's Republic of China signed in Peking on 19 December 1984, that with effect from the entry into force of the Joint Declaration—

- (a) the Fund be administered by the Financial Secretary, who may delegate his power of administration to other public officers;
- (b) the Fund comprise a suspense account, a works account and a reserve account;
- (c) there be credited to the suspense account—
 - (i) premium income obtained from land transactions covered by paragraph 6 of Annex III to the Joint Declaration, pending deduction of the average cost of land production and sharing in accordance with paragraph 6 of Annex III to the Joint Declaration;
 - (ii) all moneys received by way of interest or dividends earned in respect of moneys held in the suspense account;
- (d) there be credited to the works account—
 - (i) the amount deducted from premium income held in the suspense account that represents the average cost of land production;
 - (ii) the amount of premium income held in the suspense account that represents the Government's share;
 - (iii) all moneys received arising from works or commitments entered into for the purposes of the Fund;
 - (iv) unclaimed deposits in respect of moneys referred to in sub-paragraph (iii) which have been unpaid for 5 years;
 - (v) all moneys received by way of interest or dividends earned in respect of moneys held in the works account;
 - (vi) such donations and other moneys as may be received for the purposes of the Fund;
 - (vii) such transfers from the reserve account as the Financial Secretary may authorize;
- (e) there be credited to the reserve account such appropriations from general revenue as may be approved by this Council;
- (f) all moneys received by way of interest or dividends earned in respect of moneys held in the reserve account shall form part of the general revenue;
- (g) the Financial Secretary shall transfer from the suspense account to the works account—

- (i) the amount deducted from premium income held in the suspense account that represents the average cost of land production;
 - (ii) the amount of premium income held in the suspense account that represents the Government's share;
- (h) the Financial Secretary shall pay from the suspense account to banks incorporated in Hong Kong the amount of premium income held in the suspense account that represents the future Hong Kong Special Administrative Region Government's share;
- (i) the Financial Secretary shall at the beginning of each financial year, for the purpose of sharing all moneys credited to the suspense account under paragraph (c)(ii) during the preceding financial year between the Government and the future Hong Kong Special Administrative Region Government—
 - (i) divide such moneys in the proportion according to which transfers and payments were made under paragraphs (g) and (h) respectively during that preceding financial year;
 - (ii) transfer the Government's share from the suspense account to the works account and pay the future Hong Kong Special Administrative Region Government's share from the suspense account to banks incorporated in Hong Kong;
- (j) the Financial Secretary may expend moneys from the works account for the purposes of the Government's public works programme and for the acquisition of land, in accordance with such conditions, exceptions and limitations as may be specified by the Finance Committee;
- (k) the Financial Secretary may from time to time—
 - (i) transfer from the reserve account to the works account such sums as may be required for the purposes of the Fund;
 - (ii) pay from the reserve account to general revenue any balance in the reserve account which is not required for the purposes of the Fund;
- (l) the Director of Accounting Services shall, under the authority of a funds warrant issued by the Financial Secretary, pay from the Fund such sums as may be required to meet expenditure from the Fund;
- (m) the Financial Secretary in his discretion may authorize the investment in such manner as he may determine of any moneys held in the Fund at any time;
- (n) all moneys held in the Fund on the date on which the Joint Declaration enters into force shall be deemed to be held in the works account;
- (o) paragraphs (a), (b), (c), (d), (e), and (f) of the resolution made and passed by this Council on 27 July 1983, and published in the *Gazette* as Legal Notice No. 250 of 1983, shall cease to apply.

LI Wing

Clerk to the Legislative Council.

COUNCIL CHAMBER.

15 May 1985.

CAPITAL WORKS RESERVE FUND
(extracted from vol. II of the
Estimates for the year ending 31 March 1998)

Memorandum Note

The Capital Works Reserve Fund was established with effect from 1 April 1982 by Resolution of the Legislative Council on 20 January 1982 for the purpose of financing the Public Works Programme and acquisition of land. The first Resolution was subsequently replaced by a second on 27 July 1983. For the purpose of giving effect to arrangements for implementing paragraph 6 of Annex III to the Joint Declaration of the Government of the United Kingdom and the Government of the People's Republic of China signed in Peking on 19 December 1984, the 1983 Resolution was replaced by a third Resolution passed by the Legislative Council on 15 May 1985. On 13 January 1988, the Legislative Council passed an amendment to section (j) of the Resolution which effected the transfer of the financing of capital subventions and major systems and equipment from the General Revenue Account to the Fund with effect from 1 April 1988. On 6 November 1991, the Legislative Council passed an amendment to the Resolution to include provisions for Government borrowings to be credited to the Fund and for repayments, and payment of interest and expenses relating to such borrowings, to be made from the Fund. As consequential amendments to the New Territories Land Exchange Entitlements (Redemption) Ordinance enacted on 12 December 1996, the Resolution was amended to include provisions for the payment of redemption money payable in respect of land exchange entitlements and of interest payable thereon under the New Territories Land Exchange Entitlements (Redemption) Ordinance. These amendments will take effect when the Ordinance comes into operation on a day to be appointed by the Secretary for Planning, Environment and Lands.

2 The Resolution provides that—

- (a) the Fund be administered by the Financial Secretary, who may delegate his power of administration to other public officers;
- (b) the Fund comprises a suspense account, a works account and a reserve account;
- (c) there be credited to the suspense account—
 - (i) premium income obtained from land transactions covered by paragraph 6 of Annex III to the Joint Declaration, pending deduction of the average cost of land production and sharing in accordance with paragraph 6 of Annex III to the Joint Declaration; and
 - (ii) all moneys received by way of interest or dividends earned in respect of moneys held in the suspense account;
- (d) there be credited to the works account—
 - (i) the amount deducted from premium income held in the suspense account that represents the average cost of land production;
 - (ii) the amount of premium income held in the suspense account that represents the Government's share;
 - (iii) all moneys received arising from works or commitments entered into for the purposes of the Fund;
 - (iv) unclaimed deposits in respect of moneys referred to in sub-paragraph (iii) which have been unpaid for 5 years;
 - (v) all moneys received by way of interest or dividends earned in respect of moneys held in the works account;
 - (vi) such donations and other moneys as may be received for the purposes of the Fund; and
 - (vii) such transfers from the reserve account as the Financial Secretary may authorise;
- (e) there be credited to the reserve account—
 - (i) such appropriations from general revenue as may be approved by the Legislative Council; and

- (ii) sums borrowed under section 3 of the Loans Ordinance (Cap. 61) where the Resolution of the Legislative Council approving the borrowing so stipulates;
- (f) all moneys received by way of interest or dividends earned in respect of moneys held in the reserve account shall form part of general revenue;
- (g) the Financial Secretary shall transfer from the suspense account to the works account—
 - (i) the amount deducted from premium income held in the suspense account that represents the average cost of land production; and
 - (ii) the amount of premium income held in the suspense account that represents the Government's share;
- (h) the Financial Secretary shall pay from the suspense account to banks incorporated in Hong Kong the amount of premium income held in the suspense account that represents the future Hong Kong Special Administrative Region Government's share;
- (i) the Financial Secretary shall at the beginning of each financial year, for the purpose of sharing all moneys credited to the suspense account under paragraph (c)(ii) during the preceding financial year between the Government and the future Hong Kong Special Administrative Region Government—
 - (i) divide such moneys in the proportion according to which transfers and payments were made under paragraphs (g) and (h) respectively during that preceding financial year; and
 - (ii) transfer the Government's share from the suspense account to the works account and pay the future Hong Kong Special Administrative Region Government's share from the suspense account to banks incorporated in Hong Kong;
- (j) the Financial Secretary may expend moneys from the works account for—
 - (i) the purposes of the Government's Public Works Programme;
 - (ii) the purchase and installation of equipment consequential on implementing the Public Works Programme;
 - (iii) the development, purchase and installation of major systems and equipment used by the Government;
 - (iv) capital subventions;
 - (v) the acquisition of land; and
 - (vi) the payment of redemption money payable in respect of land exchange entitlements and interest payable thereon under the New Territories Land Exchange Entitlements (Redemption) Ordinance (to come into effect on a day to be appointed by the Secretary for Planning, Environment and Lands),

in accordance with such conditions, exceptions and limitations as may be specified by the Finance Committee;
- (k) the Financial Secretary may from time to time—
 - (i) transfer from the reserve account to the works account such sums as may be required for the purposes of the Fund;
 - (ii) pay from the reserve account to general revenue any balance in the reserve account which is not required for the purposes of the Fund; and
 - (iii) repay or, where appropriate, pay from the reserve account the principal and interest of and expenses incurred in relation to sums borrowed under section 3 of the Loans Ordinance (Cap. 61) where the sums have been credited to the reserve account;
- (l) the Director of Accounting Services shall, under the authority of a funds warrant issued by the Financial Secretary, pay from the Fund such sums as may be required to meet expenditure from the Fund;
- (m) the Financial Secretary in his discretion may authorise the investment in such manner as he may determine of any moneys held in the Fund at any time; and

- (n) all moneys held in the Fund on the date on which the Joint Declaration enters into force shall be deemed to be held in the works account.

3 In accordance with the Resolution, all revenue from land transactions covered by paragraph 6 of Annex III to the Joint Declaration, other than those transactions decided upon before the coming into force of the Joint Declaration and those not conferring a benefit after 1997, is paid into the suspense account of the Fund. Sharing and calculation of the cost of land production is carried out by the Sino-British Land Commission at the end of each quarter. The interest accruing to the suspense account is shared once a year at the beginning of the financial year. It is estimated that sharing in 1996–97 will result in \$26,554 million and \$23,847 million being transferred to the works account and the future Hong Kong Special Administrative Region Government's account respectively. The land premium sharing arrangement under paragraph 6 of Annex III to the Joint Declaration will lapse on 1 July 1997. All premium income obtained from land transactions after 30 June 1997 shall be exclusively at the disposal of the Government of the Hong Kong Special Administrative Region. In 1997–98, it is estimated that sharing of premium income from land transactions before 1 July 1997 and the crediting of the whole proceeds from land transactions after 30 June 1997 to the Hong Kong Special Administrative Region Government will result in \$46,925 million and \$20,391 million being transferred to the works account and the future Hong Kong Special Administrative Region Government's account respectively. §

§ Paragraph (c)(i) of the Resolution provides for the crediting to the suspense account of the Fund of premium income obtained from land transactions covered by paragraph 6 of Annex III to the Joint Declaration. Paragraph 6 of Annex III to the Joint Declaration deals with land transactions from the entry into force of the Joint Declaration to 30 June 1997. It follows that the provision under paragraph (c)(i) of the Resolution will become obsolete and inapplicable after 30 June 1997. However, pending an amendment to the Resolution to give effect to the appropriate arrangements to account for the premium income obtained from land transactions after 30 June 1997, we have assumed for the purposes of the 1997–98 Estimates that the whole of that income will continue to be credited to the suspense account and then transferred to the works account of the Fund.