

立法會
Legislative Council

LC Paper No. LS28/03-04

**Paper for the House Committee Meeting
on 9 January 2004**

**Legal Service Division Report on
Proposed resolution under
section 3(1) of the Loans Ordinance (Cap. 61)**

The Secretary for Financial Services and the Treasury ("the Secretary") has given notice to move a motion under section 3(1) of the Loans Ordinance (Cap. 61) at the Legislative Council meeting of 14 January 2004. The motion seeks the Legislative Council's approval to authorize the Government to borrow, for the purposes of the Capital Works Reserve Fund established by resolutions passed under section 29 of the Public Finance Ordinance (Cap. 2) ("PFO"), a sum or sums not exceeding \$6,000,000,000 or equivalent by way of securitizing Government revenue receivable from tolls on bridges and tunnels and such other Government revenue receivable from bridges and tunnels as specified by the Financial Secretary ("FS").

2. Under the Loans Ordinance, the Government may, in such manner and on such terms and subject to such conditions as may be agreed between the Government and any person, borrow from such person such sum or sums and for such purposes as may be approved by resolution of the Legislative Council. To give effect to the terms of any agreement which the Government may enter into with a lender in respect of any borrowing under the Ordinance, the Government may issue bonds, promissory notes or other instruments.

3. According to the draft speech of the Secretary, as part of the measures to implement the Government's budgetary proposal for 2003-04 to dispose of or securitize assets of an estimate value of \$21 billion within the current financial year, the Government intends to raise up to \$6 billion through securitizing revenue receivable from Government toll tunnels and bridges, namely, the Aberdeen Tunnel, Cross-Harbour Tunnel, Lion Rock Tunnel, Shing Mun Tunnels, Tseung Kwan O Tunnel, Tsing Ma Bridge, Ma Wan Viaduct and Kap Shui Mun Bridge ("the specified tunnels and bridges"). It is stated in the LegCo Brief (File Ref.: FIN CR1/4651/01) issued by the Financial Services and the Treasury Bureau in December 2003 that the proposed securitization will be implemented by the issue of revenue-backed notes

primarily in Hong Kong Dollars to both retail and institutional investors with different maturities with an average maturity of around 8-9 years. Such notes will entitle investors to be paid annual or other periodic sums serviced from net revenue derived from the operation of the specified tunnels and bridges during the life of the notes. Under the proposed securitization, the Government will retain ownership of the specified tunnels and bridges and its right to the revenue from these tunnels and bridges will fully revert to Government at the end of the securitization period.

4. Under section 5(1) of the Loans Ordinance, any sums borrowed by the Government under the Ordinance shall, except in the case of sums borrowed for the purposes of the general revenue, be applied and are appropriated to the purposes for which they were borrowed. If the proposed resolution is passed, the sum or sums of money raised through securitization will be applied and appropriated to the purposes of the Capital Works Reserve Fund ("the Fund") established by resolutions passed under section 29 of the PFO. Under the PFO, moneys from the Fund may be expended for various specified purposes in accordance with such conditions, exceptions and limitations as may be specified by the Finance Committee. These purposes include those of the Government's public works programme, and the purchase and installation of equipment consequential on implementing the public works programme. If any part of the sum borrowed cannot be applied for the purposes for which it was borrowed, section 5(1) of the Loans Ordinance provides that it may be applied to such other purposes as may be approved by the FS. Any sum borrowed under the Loans Ordinance and all interest and other charges thereon are charged upon and shall be payable out of the general revenues and assets of Hong Kong. Where an agreement has been concluded with a lender and notes are issued in connection with any borrowing under the Loans Ordinance, section 6(2) of the Ordinance provides that the Chief Executive may, by order published in the Gazette, provide for the remission of any tax, duty, charge or fee payable under any Ordinance in respect of the agreement or notes or in respect of any payment of interest or otherwise under the agreement or notes.

5. The Panel on Financial Affairs was briefed on the policy aspects of the proposed resolution at its meeting on 5 January 2004. At the meeting, members generally supported the policy objectives of the proposed resolution. However, they were concerned about the lack of details provided by the Administration such as details on the structure of the proposed securitization, target investors and interest rates of the notes to be issued, and details on similar arrangements in other jurisdictions. Some members raised queries on matters relating to the implementation of the proposed securitization, including the appropriateness of securitizing the tolls receivable from the Lantau Link (comprising Tsing Ma Bridge, Ma Wan Viaduct and Kap Shui Mun Bridge) at the present moment when the Lantau Link was not too revenue-generating, and whether it was appropriate for Government to give investors assurances to compensate them for any losses due to events which

were under Government's control. The Administration replied that details on the proposed securitization would be worked out with the arrangers after the proposed resolution was passed. It was expected that those details would be available in early March 2004. The Administration further stated that whether the Lantau Link would be included in the proposed securitization was still being considered. As regards the appropriateness of giving assurances to investors, the Administration indicated that this would help lower the interest rates of the notes to be issued.

6. Under section 3(3) of the Loans Ordinance, a copy of the agreement relating to the issue of the notes under the proposed securitization is required to be laid on the table of the Legislative Council as soon as practicable after the execution of the agreement. However, the FS may exercise his discretion under section 3(4) of the Ordinance to exclude the agreement from the application of section 3(3). Members may wish to note that the Administration intends to recommend the FS to exercise the discretion.

7. In response to the drafting issues raised by the Legal Service Division, the Administration has obtained permission from the President to replace the motion referred to in paragraph 1 with a modified version, a copy of which is annexed. We are satisfied that the legal effect of the modified version is substantially the same as the motion referred to in paragraph 1 and it has addressed the relevant drafting issues.

8. The proposed resolution would provide the Government with the legal authority required for borrowing money in the manner and for the purposes as stated by the Administration. However, members may wish to consider whether in the light of the queries raised by some of the members of the Panel on Financial Affairs at the meeting held on 5 January 2004 and the response given by the Administration at the meeting, and the likelihood of the FS exercising his discretion under section 3(4) of the Loans Ordinance not to table a copy of the agreement relating to the issue of the notes under the proposed securitization, it may be necessary for the House Committee to set up a subcommittee to study the proposed resolution.

Encl.

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8 January 2004

Annex

LOANS ORDINANCE

RESOLUTION

(Under section 3(1) of the Loans Ordinance (Cap. 61))

RESOLVED, in exercise of the powers conferred by section 3(1) of the Loans Ordinance, that the Government be authorized to borrow, for the purposes of the Capital Works Reserve Fund established by resolutions passed under section 29 of the Public Finance Ordinance (Cap. 2), a sum or sums not exceeding in total \$6,000,000,000 or equivalent by way of securitizing Government revenue receivable from the tolls on any or all of the bridges and tunnels specified in the Schedule and such other Government revenue receivable from any or all of those bridges and tunnels as specified by the Financial Secretary.

SCHEDULE

1. Aberdeen Tunnel.
2. Cross-Harbour Tunnel.
3. Lion Rock Tunnel.
4. Shing Mun Tunnels.
5. Tseung Kwan O Tunnel.
6. Tsing Ma Bridge.
7. Ma Wan Viaduct.
8. Kap Shui Mun Bridge.