

立法會 *Legislative Council*

LC Paper No. LS73/03-04

Paper for the House Committee Meeting on 30 April 2004

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

The Financial Secretary ("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 12 May 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 in total \$20 billion or equivalent.

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 2004-05 to issue government bonds in order to raise capital revenue to fund infrastructure or other investment projects which will bring long-term economic benefits to Hong Kong, the Government intends to raise up to \$20 billion.

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 issuance of bonds will be applied and appropriated to the purposes of the Capital Works Reserve Fund ("the Fund"). 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. Purposes of the use of the Fund are prescribed in the resolution passed by the Provisional Legislative Council on 17 December 1997 (copy of the resolution is attached for easy reference). 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 Secretary. 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 or bonds 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 bonds or in respect of any payment of interest or otherwise under the agreement or bonds.

5. Under section 3(3) of the Loans Ordinance, a copy of the agreement relating to the issuance of bonds is required to be laid on the table of the Legislative Council as soon as practicable after the execution of the agreement. However, the Secretary may exercise his discretion under section 3(4) of the Ordinance to exclude the agreement from the application of section 3(3). In response to our enquiry, the Administration confirms that it intends to recommend to the Secretary to exercise his discretion under section 3(4) of the Loans Ordinance to exclude the loan agreement(s) from the tabling requirement. According to the Administration, the main reason for this is while most of the information contained in the loan agreement(s) will have been included in the concerned prospectus/offering circular for public disclosure purposes, information relating to the identity of the investors and the amount of their subscription should be kept confidential for commercial reasons. The Administration further opines that similar arrangement has been made in the recent offering of "Five Tunnels and One Bridge".

6. It is noted that in the recent offering of "Five Tunnels and One Bridge", the means to raise the loan, i.e. by way of securitizing Government revenue receivable from tolls on specified bridges and tunnels, is specified in the resolution passed by the Legislative Council (L.N. 26 of 2004). However, the means to raise the loan, i.e. by way of issuance of bonds, is not specified in the proposed resolution. In response to our enquiry, the Administration has explained that section 3(1) of the Loans Ordinance requires the sum and the purposes of the loan to be approved by resolution of the Legislative Council while the manner and terms and conditions of borrowing are to be agreed between the Government and the lender. The Administration has further explained that the resolution relating to the recent offering of "Five Tunnels and One Bridge" specified the manner in which that borrowing is to be repaid (future revenue from concerned facilities) in order to send a clear signal to investors and other parties involved that the General Revenue is not involved, but there is no need to send such signal in the present case as issuance of plain/vanilla Government bonds (i.e. bonds issued in the name of Government) is proposed and

repayment will be made through future appropriations out of General Revenue. In support of its explanation, the Administration also gives precedents of resolutions passed by the Legislative Council consistent with the arrangement adopted in the proposed resolution, in particular L.N. 398 of 1991 which is related to the issuance of Government bonds at the time.

7. The Panel on Financial Affairs has not been briefed on the Administration's proposal to issue Government bonds in order to raise capital revenue of up to \$20 billion to fund infrastructure or other investment projects.

8. At Session 5 (Financial Services) of the special Finance Committee meeting held on 29 March 2004, a member expressed support for the Administration's initiative to promote Hong Kong's debt market. He was however concerned that the new Government bonds and securitized bonds would only be open to institutional investors. In order to enable the general public to benefit from these bonds exercises, he urged the Administration to explore more bonds distribution channels to cover retail and small investors. The Secretary for Financial Services and the Treasury assured members that a certain portion of the bonds would be designated for subscription by small investors.

9. The proposed resolution would provide the Government with the legal authority required for borrowing money and for the purposes as stated therein. However, members may wish to consider whether in the light of the concern mentioned in paragraph 8 above, it is necessary to set up a subcommittee to consider the proposed resolution in detail.

Encl

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[附屬法例]

政府與中華人民共和國政府於 1984 年 12 月 19 日在北京簽署的聯合聲明附件 III 第 6 款的規定、通過由聯合聲明生效之時起——

(a)-(n) (停止適用，見第 4(h) 條。)

(o) 本局在 1983 年 7 月 27 日作出及通過，並在憲報以 1983 年第 250 號法律公告刊出的決議，其中的 (a)、(b)、(c)、(d)、(e) 及 (f) 款停止適用。

(1985 年第 131 號法律公告)

4. 臨時立法會於 1997 年 12 月 17 日根據《公共財政條例》(第 2 章) 第 29(1) 條提出和通過的決議。

議決對於基本工程儲備基金(該基金由立法局於 1982 年 1 月 20 日提出和通過並在憲報刊登為 1982 年第 18 號法律公告的決議所設立)，通過下列事項——

(a) 基金由財政司司長管理，他可將管理權轉授其他公職人員；

(b) 下列款項記入基金的貸項下——

(i) 從土地交易所收受的地價收入；

(ii) 為基金的目的而進行的工程或承擔的責任而收受的一切款項；

(iii) 與第 (ii) 段所指的款項有關而在 5 年內無人認領的尚未支付存款；

(iv) 經臨時立法會或立法會核准由政府一般收入撥出的款項；

(v) 根據《借款條例》(第 61 章) 第 3 條借入的款項，而該借款是核准借款的臨時立法會決議或立法會決議所如此規定記入者；

(vi) 所有來自基金所持款項賺得的已收受利息或股息；

(vii) 為基金而收受的捐獻及其他款項；

(c) 財政司司長可由基金支用款項——

(i) 以作為政府公共工程計劃的用途；

(ii) 以購置和安裝為實施公共工程計劃而致必需的設備；

(iii) 以發展、購置和安裝政府所用的主要系統及設備；

[Subsidiary]

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)-(n) (ceased to apply, see paragraph 4(h).)

(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.

(L.N. 131 of 1985)

4. Resolution made and passed by the Provisional Legislative Council under section 29(1) of the Public Finance Ordinance (Cap. 2) on 17 December 1997.

RESOLVED with respect to the Capital Works Reserve Fund established by resolution made and passed by the Legislative Council on 20 January 1982 and published in the Gazette as Legal Notice No. 18 of 1982, 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 subparagraph (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) 以用作非經常補助金；
- (v) 以收購土地；及
- (vi) 以支付根據《新界土地交換權利(贖回)條例》(第 495 章)須就土地交換權利支付的贖回款項以及須就該等贖回款項支付的利息，但須按照財務委員會所指明的條件、例外情況及限制行事；
- (d) 財政司司長可——
 - (i) 將基金內基金不需用的款項的結餘從基金撥入政府一般收入內；
 - (ii) 償還根據《借款條例》(第 61 章)第 3 條借入並已記入基金貸項下的本金及其利息，以及償還就借入該筆款項而招致的費用；
 - (iii) 行使酌情決定權，授權將基金在任何時間所持的任何款項，以財政司司長決定的方式投資；
- (e) 庫務署署長須根據財政司司長發出的基金支付令授予的權限，由基金撥支款項以應付基金開支所需；
- (f) 本決議自財政司司長以憲報公告指定的日期起實施*；
- (g) 自 (a) 至 (f) 款的實施日期起，基金內的暫記帳、工程帳及儲備帳須予取消，任何仍留在該等帳項內的款項須全數結轉入基金內；及
- (h) 立法局於 1985 年 5 月 15 日提出和通過，並在憲報以 1985 年第 131 號法律公告刊出的決議，其中的 (a) 至 (n) 款以及任何其後對該等條款作出的修訂停止適用。

(1997 年第 610 號法律公告)

* 實施日期：1998 年 1 月 1 日。

- (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, authorize 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), the suspense account, works account and 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.

(L.N. 610 of 1997)

* Commencement date: 1 January 1998.