

立法會
Legislative Council

LC Paper No. CB(1)2441/08-09
(These minutes have been seen
by the Administration)

Ref : CB1/SS/8/08/1

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

**Minutes of meeting
held on Thursday, 18 June 2009, at 2:30 pm
in the Chamber of the Legislative Council Building**

- Members present** : Hon Jeffrey LAM Kin-fung, SBS, JP (Chairman)
Hon Albert HO Chun-yan
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Miriam LAU Kin-ye, GBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Starry LEE Wai-king
Dr Hon LAM Tai-fai, BBS, JP
Hon Paul CHAN Mo-po, MH, JP
Hon CHAN Kin-por, JP
Hon Tanya CHAN
Hon WONG Kwok-kin, BBS
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
- Member attending** : Hon KAM Nai-wai, MH
- Members absent** : Dr Hon David LI Kwok-po, GBM, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP

- Public officers attending** : Financial Services and the Treasury Bureau
- Mr CHENG Yan-chee, JP
Deputy Secretary for
Financial Services and the Treasury (Financial Services) 1
- Miss Natalie LI
Principal Assistant Secretary for
Financial Services and the Treasury (Financial Services) 5
- Miss Ann CHAN
Principal Assistant Secretary for
Financial Services and the Treasury (Treasury)(I)
- Hong Kong Monetary Authority
- Mr Edmond LAU, JP
Executive Director (Monetary Management)
- Mr Daryl HO
Head (Market Development)(Acting)
- Department of Justice
- Mr Michael LAM
Senior Assistant Law Draftsman
- Ms Lonnie NG
Senior Government Counsel
- Clerk in attendance** : Ms Rosalind MA
Chief Council Secretary (1)5
- Staff in attendance** : Miss Kitty CHENG
Assistant Legal Adviser 5
- Ms Amy LEE
Senior Council Secretary (1)8
- Ms Haley CHEUNG
Legislative Assistant (1)8
-

I Confirmation of minutes

(LC Paper No. CB(1)1901/08-09 — Minutes of meeting on 14 May 2009)

The minutes of the meeting held on 14 May 2009 were confirmed.

II Meeting with the Administration

Follow-up to issues raised at the meeting on 8 June 2009

(LC Paper No. CB(1)1924/08-09(01) — Administration's paper on further response to issues raised

LC Paper No. CB(1)1965/08-09(01) — Proposed amendment to motion on the proposed resolution under section 29 of the Public Finance Ordinance (Cap. 2) (PFO) put forward by Hon KAM Nai-wai

LC Paper No. CB(1)1965/08-09(02) — Proposed amendments to motion on the proposed resolution under section 29 of PFO put forward by Hon James TO

LC Paper No. CB(1)1965/08-09(03) — Proposed amendments to motion on the proposed resolution under section 29 of PFO put forward by Hon Albert HO

LC Paper No. CB(1)1994/08-09(01) — Administration's response to proposed amendments put forward by Hon KAM Nai-wai, Hon James TO and Hon Albert HO (tabled at the meeting and issued on 19 June 2009)

Relevant papers previously issued

(LC Paper No. CB(3)553/08-09 — Proposed resolution under section 29 of PFO

LC Paper No. CB(3)554/08-09 — Proposed resolution under section 3 of the Loans Ordinance (Cap.61)

G6/123/5C

— The Legislative Council Brief issued by the Financial Services and the Treasury Bureau)

2. The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions

3. Pursuant to Mrs Regina IP's request, the legal adviser to the Subcommittee would provide examples of the funds established under section 29 of PFO, which contained provisions relating to the purpose(s), object(s) or use(s) of the funds.

4. Pursuant to the request of Mr James TO, the Administration was requested to provide further information about the advice of the Department of Justice (DoJ) that setting out the policy objective of the Government Bond Programme (GBP) in the proposed resolution under section 29 of PFO might give rise to uncertainty in interpretation, in particular, examples of possible circumstances or precedent cases which could illustrate the uncertainty and the risk of litigation arising therefrom.

(Post-meeting note: The information required in paragraphs 3 and 4 above were issued vide LC Paper Nos. CB(1)1999/08-09(01) and CB(1)2083/08-09(01) on 19 and 26 June 2009 respectively.)

II Any other business

Way forward

5. Members agreed to decide on the need for holding another meeting having regard to the supplementary information required in paragraphs 3 and 4 above. Meanwhile, the Subcommittee had no objection to the moving of the motion regarding the two proposed resolutions by the Financial Secretary (FS) on 8 July 2009. The Subcommittee noted that the Chairman would make a verbal report at the House Committee on 19 June 2009.

(Post-meeting note: Having regard to members' views on the need for holding another meeting sought through LC Paper No. CB(1)2005/08-09, the Chairman had decided that no further meeting would be arranged.)

6. There being no other business, the meeting ended at 4:34 pm.

**Proceedings of the
Subcommittee on Proposed Resolutions under Section 29 of the Public Finance
Ordinance (Cap. 2) and Section 3 of the Loans Ordinance (Cap. 61)
Meeting on Thursday, 18 June 2009, at 2:30 pm
in the Chamber of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000658	Chairman	Confirmation of minutes of meeting on 14 May 2009 (LC Paper No. CB(1)1901/08-09).	
000659 – 001240	Chairman Administration	Briefing by the Administration on its further response to the relevant issues raised by members (LC Paper No. CB(1)1924/08-09(01)).	
001241 – 001340	Chairman ALA5	In relation to the Administration's proposal to elaborate the policy objective of GBP in paragraph 1 of the Explanatory Note to each of the proposed resolutions, ALA5's advice that Explanatory Notes to resolutions were not part of the legislation. The legal effect of a piece of legislation was to be ascertained from its provisions. As to the Administration's suggestion of stating the policy objective of GBP in the Financial Secretary (FS)'s speech for moving of the motions regarding the proposed resolutions, it was up to members to decide whether they found this acceptable.	
001341 – 002259	Chairman Mr James TO Mr Albert HO	<p>(a) Mr James TO's advice that the amendment to the proposed resolution under section 29 of PFO proposed by Mr KAM Nai-wai, Mr Albert HO and himself shared some elements in common, with Mr Albert HO's proposed amendments representing the combination of all the three elements, as follows –</p> <p>(i) setting out that the purpose of the establishment of the Bond Fund was to promote the further and sustainable development of the local bond market;</p> <p>(ii) stating explicitly in paragraph (e)(ii) of the proposed resolution that the moneys in the Bond Fund would be injected into the Exchange Fund (EF) for investment in a prudent manner; and</p> <p>(iii) setting out in paragraph (b) of the proposed resolution the establishment a Bond Fund Consultation Committee to advise the Government on the</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>administration of the Bond Fund.</p> <p>(b) Mr Albert HO's supplementary explanation that the proposed amendments in (a)(i) and (ii) above only sought to set out in the legislation the Administration's intended policy objective of GBP and investment arrangement of the Bond Fund. The purpose was to ensure prudent administration and investment of the Bond Fund in accordance with the proposed framework of GBP. Mr HO's remark that Members belonging to the Democratic Party would not support the proposed resolutions if there was no express provisions on the purpose of the Bond Fund and its investment arrangement.</p>	
002300 002934	- Chairman Administration	The Administration's briefing on its written response to the proposed amendments suggested by Mr Albert HO, Mr KAM Nai-wai and Mr James TO. (LC Paper No. CB(1)1994/08-09(01)).	
002935 003649	- Chairman Mr Ronny TONG Administration	<p>(a) Responding to Mr Ronny TONG's enquiry on the size of issuance in the first year of implementation of GBP, the Administration's clarification that press reports about issuance of HK\$50 billion of government bonds in the first year of implementation were inaccurate. Having regard to the market views collected earlier, the Administration's plan was to issue HK\$10-20 billion of government bonds in the first year of implementation.</p> <p>(b) Mr TONG's enquiry on the reason for stating in paragraph (e)(ii) of the proposed resolution under PFO that moneys in the Bond Fund might be expended for the purpose of investing in the manner FS might determine, as the Government had planned to place the moneys in the Bond Fund with EF for investment.</p> <p>(c) The Administration's advice that it would not be desirable to set out any specific investment arrangement in paragraph (e)(ii) of the proposed resolution under PFO. The implementation details might need to be adjusted having regard to the changes in the market given the long-term nature of GBP. The Administration had proposed to adjust paragraph (e)(ii) of the proposed resolution in</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>response to members' concern about prudence in determining the investment strategy and arrangement in the resolution. Responding to Mr TONG's further enquiry, the Administration's advice that FS would indicate the intended investment arrangement in his speech for moving the motion regarding the proposed resolution under PFO.</p>	
<p>003650 – 004624</p>	<p>Chairman Mrs Regina IP Administration ALA5</p>	<p>(a) Mrs Regina IP's view that setting out the policy objective of GBP in the proposed resolution under PFO should not give rise to uncertainty as claimed by the Administration. Prudent investment of the Bond Fund was necessary to ensure return to meet the financial obligation and liabilities associated with GBP.</p> <p>(b) The Administration's response that the policy objective of GBP had already been set out in paragraph 1 of the Explanatory Note to each of the proposed resolutions and this should be an aid to the construction of the resolutions. DoJ had advised against the approach of setting out the policy objective of GBP in the proposed resolutions as it might give rise to uncertainty in interpretation of matters such as whether the policy objective stated could or would be achieved by GBP, the Bond Fund or individual elements thereof. Such uncertainty, however slight, would be undesirable. Any litigation arising therefrom might adversely affect the smooth implementation of GBP. The suggestion of including a preamble in the resolutions to specify the policy objective of GBP had also been examined. DoJ had advised that as a general rule, preambles were now rare and largely confined to statutes of constitutional significance or that for ratifying agreements.</p> <p>(c) Responding to Mrs IP's view that the suggestion of establishing a Bond Fund Consultation Committee should be supported, the Administration's advice that it did not consider it necessary to set up such a committee for overseeing the administration of the Bond Fund. FSTB would assist FS in keeping a vigilant oversight of the Bond Fund to ensure that only the financial obligations and liabilities associated with bond issuance</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>under the GBP would be charged to the Bond Fund.</p> <p>(d) Responding to Mrs IP's enquiry on the possibility of judicial review if the policy objective of GBP was set out in the proposed resolutions, ALA5's advice that this would depend on the drafting of the resolutions. In law, the court would consider whether the implementation details were consistent with the stated policy objectives.</p>	
004625 – 010513	Chairman Mr James TO Administration Mr Albert HO	<p>(a) Concern shared by Mr James TO and Mr Albert HO that the Administration should further revise the proposed resolution to address members' concerns about legislative provision for the policy objective of GBP as well as the administration and investment of the Bond Fund, instead of providing FS with unrestricted power to determine the implementation of GBP and expense of the Bond Fund. Mr TO's request for the Administration to reconsider the proposed amendments put forward by members.</p> <p>(b) The Administration's reference to its written response to issues raised by members and to the proposed amendments (LC Paper Nos. CB(1)1924/08-09(01) and CB(1)1994/08-09(01)). Its reiteration that it had considered members' suggestions in a serious and cautious manner. The Administration did not consider it advisable to set out the policy objective in the proposed resolutions in view of the uncertainty in interpretation arising from such an approach. Such uncertainty might dampen investors' interest to invest in GBP and hence would not be conducive to the further development of the bond market in Hong Kong. In addition to elaborating the policy objective in the Explanatory Note to the proposed resolutions, FS would state the policy objective in his speech for moving the motion regarding the proposed resolutions.</p> <p>(c) Noting that some members had raised concern about the investment of the moneys in the Bond Fund, the Administration had proposed to adjust paragraph (e)(ii) of the proposed resolution under PFO to specify that moneys</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>in the Bond Fund would be expended for the purpose of "investing in the manner FS considers appropriate for the prudent management of the Fund, and paying the expenses incurred in relation to the investments". FS would indicate the intended investment of the moneys in the Bond Fund in his speech for moving the motion regarding the relevant proposed resolution.</p> <p>(d) Concern expressed by Mr HO and Mr TO that the speech of FS when moving the motions regarding the proposed resolution would have no legal effect. Their view that the purpose, administration and investment arrangement of moneys in the Bond Fund had to be provided explicitly to ensure that GBP would be implemented according to the proposed framework.</p>	
<p>010514 – 011434</p>	<p>Chairman Mr CHAN Kam-lam ALA5 Administration HKMA</p>	<p>(a) Mr CHAN Kam-lam's enquiry on whether the Administration's proposal of stating the policy objective of GBP in the Explanatory Note to the proposed resolutions would be appropriate.</p> <p>(b) ALA5's advice that the Explanatory Note was not part of the legislation and had no legal effect. It would be up to members to decide whether they found the Administration's suggestion of stating the policy objective in the Explanatory Note and FS's speech for moving the motions regarding the two proposed resolutions acceptable. Responding to Mr CHAN's enquiry on examples of funds established under PFO which contained provisions relating to the purpose of the funds, ALA5's advice that provision for the establishment of the Disaster Relief Fund had expressly provided that the Fund would be used for disaster relief purposes. There were also examples of funds established under section 29 of PFO which did not contain provisions relating to the purpose of the fund.</p> <p>(c) Mr CHAN's further enquiry on the Administration's view on the risk of litigation if the policy objective of GBP was set out in the proposed resolutions.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(d) The Administration's reiteration that it was not advisable to set out the policy objective in the proposed resolutions in view of the uncertainty in interpretation arising from such an approach. Such uncertainty was undesirable, as any litigation arising there from might adversely affect the smooth implementation of GBP. HKMA's supplement that setting out the policy objective of GBP in the legislation might give rise to uncertainty in interpretation by different market participants, for example, certain issuers might use the litigation process to stop or delay certain bond issuance. Such uncertainty would affect the smooth operation of the Bond Fund and hence the effective implementation of GBP.</p> <p>(e) Mr CHAN's view that the Administration's suggestion to address members' concerns about setting out the policy objective of GBP or purpose of the Bond Fund in the Explanatory Notes to the proposed resolutions was acceptable.</p>	
<p>011435 – 012126</p>	<p>Chairman Mr WONG Kwok-kin Administration</p>	<p>(a) Mr WONG Kwok-kin's view that given the shortage of long-term and stable investment products in the market, the investing public were longing for the early issuance of government bond. Nevertheless, GBP could not be implemented expeditiously due to the heated debate over the drafting of the proposed resolutions. His enquiry on the use of moneys in the Bond Fund.</p> <p>(b) The Administration's response that the sums raised through GBP would be credited to the Bond Fund, which would not be treated as part of the fiscal reserves and would be managed separately from other government accounts. In authorizing expenditure from the Bond Fund, FSTB would ensure that only the financial obligations and liabilities associated with bond issuance under GBP would be charged to the Bond Fund. According to paragraph (g) of the proposed resolution, surplus funds, if any, in the Bond Fund might be transferred to the general revenue only after all financial obligations and liabilities were met in relation to the loans</p>	

Time Marker	Speaker	Subject(s)	Action Required
		borrowed under GBP and the LegCo had given the necessary approval.	
012127 – 012854	Chairman Mr Ronny TONG Administration	<p>(a) Mr Ronny TONG's view that a conservative and low-risk strategy should be adopted for investment of moneys in the Bond Fund to preserve capital and ensure stable return for meeting the financial obligations and liabilities associated with bond issuance. His view that the Administration should undertake that the sums raised would only be placed with EF for investment. If the Administration considered it undesirable to set out such an arrangement in the proposed resolution under PFO, the clear statement of FS in his speech for moving the motion regarding the proposed resolution would be acceptable.</p> <p>(b) The Administration's advice that as explained in the papers provided to the Subcommittee, a long-term and conservative strategy would be adopted for investment of the moneys in the Bond Fund. The moneys in the Bond Fund would be placed with EF for investment, adopting the same investment arrangement of EF, and the same "fixed rate" sharing arrangement applicable to the fiscal reserves would apply to the Bond Fund. FS would mention the intended investment arrangement of the moneys in the Bond Fund in his speech for moving the motion regarding the relevant proposed resolution.</p>	
012855 – 014002	Chairman Mr James TO Administration	Mr James TO's request for further information relating to the uncertainty that might arise if the policy objective of GBP was set out in the proposed resolutions.	The Administration to take action as required in paragraph 4 of the minutes
014003 – 014417	Chairman Ms Miriam LAU	(a) Ms Miriam LAU's remark that the statement made by FS in moving the motions regarding the proposed resolutions would be on official record, providing useful reference in case of future disputes. Her view that the Administration's suggestion was acceptable, having regard to the possible uncertainty and litigation risks that might arise from setting out the policy objective of GBP in the proposed resolutions.	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) Ms LAU's comment that Members belonging to Liberal Party supported the policy objective of GBP for promoting the further development of the local bond market. They were concerned whether the proposed size of bond issuance would be sufficient to grow the size of the local debt market. Her request to put on record the view that moneys in the Bond Fund should not be used for financing public projects/expenditure, and should be managed separately from the fiscal reserves. Transfer of sums in the Bond Fund to the general revenue should only be made with the approval of the LegCo.</p>	
<p>014418 – 015051</p>	<p>Chairman Mrs Regina IP HKMA ALA5</p>	<p>(a) Responding to Mrs Regina IP's further enquiry on the reasons for seeking listing status for the bonds to be issued under GBP, HKMA's advice that the arrangements were intended to satisfy investors' demand for financial disclosure and improve transparency, thus promoting demand for the bonds.</p> <p>(b) Mrs Regina IP's enquiry about examples of other funds established under section 29 of PFO, which contained provisions relating to the purpose(s), object(s) or use(s) of the funds.</p>	<p>ALA5 to provide information as required in paragraph 3 of the minutes.</p>
<p>015052 - 015205</p>	<p>Chairman Mr CHAN Kam-lam ALA5</p>	<p>Responding to Mr CHAN Kam-lam's enquiry on whether the proposed amendments put forward by Mr Albert HO, Mr KAM Nai-wai and Mr James TO had some common propositions, ALA5's agreement with his observation.</p>	
<p>015206 - 015846</p>	<p>Chairman Mr James TO ALA5 Administration</p>	<p>(a) Mr James TO's reference to the Administration's proposed amendment to paragraph (e)(ii) of the proposed resolution under PFO and his enquiry on whether this would impose any restrictions on the types of investment of the Bond Fund.</p> <p>(b) ALA5's advice that the proposed amendment to paragraph (e)(ii) of the proposed resolution under PFO for FS to invest the moneys in the Bond Fund in the manner he "considers appropriate for the prudent management of the Fund" only provided a general guideline on the management of the Bond Fund.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(c) The Administration's advice that paragraph (e)(i) of the proposed resolution under PFO had clearly stated that moneys in the Bond Fund would be expended only for the purposes of paying the principal of, interest on and expenses incurred in relation to the sums borrowed under Section 3 of the Loans Ordinance for the purposes of the Bond Fund. A prudent, conservative and long-term strategy would be adopted for investment of the moneys in the Bond Fund to ensure that the financial obligations and liabilities associated with the GBP could be met.</p>	
015847 – 020715	<p>Chairman Mr CHAN Kin-po Mr James TO Ms Miriam LAU Mr Ronny TONG Mr CHAN Kam-lam Administration Mrs Regina IP</p>	<p>Discussion on the way forward.</p>	