

立法會
Legislative Council

LC Paper No. LS71/17-18

**Paper for the House Committee Meeting
on 15 June 2018**

**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 ("SFST") has given notice to move a motion under section 3(1) of the Loans Ordinance (Cap. 61) at the Legislative Council ("LegCo") meeting of 27 June 2018. The motion seeks LegCo's approval to authorize the Government to borrow from time to time, from any person for the purposes of the Capital Works Reserve Fund ("the Fund") established by the Resolution published in the Gazette as Legal Notice No. 18 of 1982 ("CWRP Resolution"), sums not exceeding in total \$100 billion or equivalent, and to require that the sums borrowed be credited to the Fund.

2. Under Cap. 61, 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 LegCo. To give effect to the terms of any agreement which the Government may enter into with a lender in respect of any borrowing under Cap. 61, the Government may issue bonds, promissory notes or other instruments.

3. In the 2018-19 Budget, the Financial Secretary ("FS") announced the proposal to launch a Government Green Bond Programme ("the Programme") with a borrowing ceiling of \$100 billion to promote the development of green finance in Hong Kong by encouraging issuers to arrange financing for their green projects through Hong Kong's capital markets. The sums borrowed would be credited to the Fund to provide funding for green public works projects of the Government. According to paragraph 2 of the LegCo Brief (File Ref: B&M/3/1/4C) issued by the Financial Services and the Treasury Bureau on 6 June 2018, the Programme signifies the Government's support for sustainable development and determination to combat climate change by financing projects

with environmental benefits under the Public Works Programme¹. According to paragraph 5 of the LegCo Brief, issuances for the initial tranches of the Programme would target institutional investors with tenors of three to five years and such arrangement would be reviewed when it has gained more experience in green finance.

4. It is noted that borrowings under the proposed resolution would be for the purposes of "the Capital Works Reserve Fund established by the Resolution published in the Gazette as Legal Notice No. 18 of 1982" as referred to in paragraph (a) of the proposed resolution. However, in similar resolutions made under section 3(1) of Cap. 61 in L.N. 26 of 2004 (Cap. 61B) and L.N. 102 of 2004 (Cap. 61C) for the purposes of the Fund, reference was made to "the Capital Works Reserve Fund established by resolutions passed under section 29 of the Public Finance Ordinance (Cap. 2)". In response to the Legal Service Division ("LSD")'s enquiries on the reason(s) for the different drafting approaches, the Administration explained that the way that the Fund is referred to in the proposed resolution is more precise than the wording used in Cap. 61B and Cap. 61C. By referring to the number and the publication year of the relevant legal notice (i.e. Legal Notice No. 18 of 1982), the Administration considers that it should enable readers to identify the relevant legislative instrument that established the Fund more easily. We consider that the way of referring the Fund in the proposed resolution will not give rise to interpretation difficulties.

5. It is further noted that if the proposed resolution is passed, pursuant to paragraph (c) of the CWRP Resolution, FS may expend moneys from the Fund to which the borrowings would be credited for various specified purposes (including those of Government's public works programme) in accordance with such conditions, exceptions and limitations as may be specified by the Finance Committee. The proposed resolution, as presently drafted, appears to be wide enough to allow the Government to expend the amount of borrowings for the purposes of any Government's public works programme, not just green public works projects as stated in the LegCo Brief and the draft speech of SFST to be made at the LegCo meeting of 27 June 2018. In response to LSD's enquiries on whether amendment should be proposed to the proposed resolution to make it clear that the borrowings would be used to finance green public works projects of the Government only so as to reflect the above legislative intent, the Administration responded that the green bond market, which is still in its development stage, is fast evolving and there is not a single set of universally-accepted green standards or guidelines. The Administration therefore proposes

¹ Public Works Programme projects relating to renewable energy, energy efficiency, pollution prevention and control, waste management, water and wastewater management, and green/low carbon building are potential projects to underpin issuance under the Programme.

not to prescribe "green" in the proposed resolution but to state clearly in the explanatory note of the proposed resolution and further elaborated in the LegCo Brief that the Government seeks to implement the Programme to provide funding for green public works projects of the Government through the proposed resolution. Furthermore, according to the Administration, all the projects funded under the Programme must be approved by the Finance Committee under the existing mechanism. The legislative intent would also be reiterated in SFST's speech in moving the proposed resolution and a similar approach was adopted in respect of L.N. 102 of 2004 (i.e. Cap. 61C).

6. As advised by the Clerk to the Panel on Financial Affairs, the Administration briefed the Panel at its meeting of 3 April 2018 on the initiatives for promoting and facilitating the development of green finance in Hong Kong including introduction of the Programme. Members raised enquiries on a number of matters including the issuance size of and interest rate for the green bonds, target investors of the green bonds, implementation of green public works projects and their funding procedures, as well as other measures for developing the green bond market in Hong Kong.

7. The proposed resolution, if passed, would come into operation on the day of publication in the Gazette.²

8. Subject to members' views on the issues mentioned in paragraphs 4 and 5 above, no difficulties relating to the legal and drafting aspects of the proposed resolution have been identified.

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LS/R/10/17-18

² If the proposed resolution is passed by LegCo on 27 June 2018, the Administration intends to publish it in the Gazette on 6 July 2018.