

**Subcommittee on Proposed Resolution
under Section 3(1) of the Loans Ordinance (Cap. 61)**

Response to Questions and Issues Raised and Amendments Proposed

Purpose

This paper sets out the Administration's response to the relevant questions and issues raised in a letter of 4 September as well as amendments to the Proposed Resolution proposed by Members of the Subcommittee on Proposed Resolution under Section 3(1) of the Loans Ordinance (Cap. 61) ("the Subcommittee").

The Proposed Resolution and the Interpretation of the Loans Ordinance

2. As elaborated in paragraph 9 of the Further Response to the Subcommittee of 6 August 2018 ("the 2nd Response") (LC Paper No. CB(1)1316/17-18(02)), the Loans Ordinance (Cap. 61) ("the Ordinance") was enacted in 1975 to make provisions for the raising of loans by the Government. Section 3(1) of the Loans Ordinance provides the power for the Legislative Council ("LegCo") to authorize borrowing by the Government in terms of the person from whom the borrowing is made, the amount or amounts of such borrowing and the purposes. It does not cover the power to authorize expenditure by the Government. Expenses incurred in relation to sums borrowed under the Proposed Resolution will be made in accordance with the provisions of the Capital Works Reserve Fund (Cap. 2A).

3. As explained in paragraph 17 of the Response to the Subcommittee of 18 July 2018 ("the 1st Response") (LC Paper No. CB(1)1248/17-18(02)) and in paragraph 9 of the 2nd Response, section 3(1) of the Ordinance requires that the purposes of borrowings, amongst other things, be approved by resolution of LegCo. Such a requirement has been met, as it is set out clearly in the Proposed Resolution that the borrowing is "for the purposes of the Capital Works Reserve Fund ("CWRF")".

4. The phrase “from time to time” or “不時” in Chinese is not defined in the Proposed Resolution or the Ordinance. In the absence of any specified provision, such phrase is to be interpreted having regard to its ordinary and literal meaning which means “occasionally”, or “sometimes, but not often”. As explained in paragraph 10 of the 2nd Response, a resolution made and passed by LegCo pursuant to Section 3(1) of the Ordinance remains valid unless it is repealed or replaced. The phrase “一筆或多筆” does not appear in the Ordinance or in the Proposed Resolution.

The Positive Vetting Procedures of Subsidiary Legislation

5. According to Section 35 of the Interpretation and General Clauses Ordinance (Cap. 1) stipulates that any subsidiary legislation which requires the approval of LegCo has to be submitted to LegCo, which may by resolution approve it. All subsidiary legislation subject to this Section have been processed and approved by LegCo through the “positive vetting procedures” including four resolutions made under section 3 of the Ordinance, i.e. the two resolutions made for the purposes of the CWRP in 2004 and another two resolutions made for the purposes of the Bond Fund in 2009 and 2013 respectively. As a proposed subsidiary legislation subject to Section 35 of Cap. 1, the Proposed Resolution is submitted to LegCo for approval in accordance with the positive vetting procedures similar to other subsidiary legislations approved under these procedures.

Management of Proceeds of Issuances

6. As explained in the LegCo brief, and our previous responses to the Subcommittee, sums raised under the Government Green Bond Programme (“the Programme”) and the Proposed Resolution will be credited to the CWRP to finance projects with environmental benefits under the Public Works Programme approved by the Finance Committee of LegCo under the existing mechanism. We will continue to employ the existing arrangements to administer and manage money of the CWRP regarding money raised under the Programme and credited to the CWRP. As elaborated in paragraph 4 of the LegCo brief, every issuance under the Programme will comply with an issuance

framework that is aligned with guidelines/standards widely accepted by global investors for green bond issuance (“Guidelines/Standards”) in terms of, amongst others, the management of proceeds and the periodic reporting of project information after issuance. To this end, arrangements will be made to track and report the use of proceeds of every issuance under the Programme periodically in line with the relevant Guidelines/Standards and enhance transparency under the Programme. As far as we understand, sovereign green bonds issued by other governments so far are aligned with Guidelines/Standards in terms of the management of proceeds and the periodic reporting of project information in similar fashion.

Proposed Amendments to the Proposed Resolution

7. We do not support the amendments to the Proposed Resolution proposed by Members of the Subcommittee. These amendments are mainly related to (1) purposes of borrowing, (2) valid period of authorisation, (3) cost of borrowings, (4) the authority to expending the sum(s) raised. Our detailed responses to the proposed amendments in the said areas are set out below.

Amendments related to purposes of borrowing and valid period of authorisation

8. The proposed amendments to paragraph (a) of the Proposed Resolution and proposed addition of paragraph (c) to it by Hon. AU Nok-hin, the proposed amendments to paragraph (a) setting a period of authorisation¹ by Hon. CHU Hoi-dick, and their proposed deletion of the phrase “from time to time” will introduce uncertainties as to whether the Government is authorized to launch the Programme which is intended to be an on-going one as explained in paragraph 3 of the LegCo Brief. The inability to launch the Programme on an on-going basis with certainty may not be consistent with the objectives of the Programme, i.e. promoting the development of green finance in Hong Kong and signifying the Government’s support for sustainable development and determination to combat climate change. These uncertainties and inconsistency may affect global investors’ confidence in the development of green finance in Hong Kong.

¹ These refer to the amendments to paragraph (a) to include the phrase “within two years since the day the Council passes this Resolution” or a similar phrase with “two years” replaced by “five years”:

9. In addition to the purposes of the CWRP as set out in paragraph (a) of the Proposed Resolution, it was proposed to also include “to finance projects with environmental benefits under the Public Works Programme” in a new paragraph (aa) by the Hon. Au. The proposed approach may give rise to uncertainty in interpretation of the term “green public works projects”. As explained in paragraphs 3 to 7 of the 1st Response and paragraphs 5 and 6 of the Further Response to the Subcommittee of 28 August 2018 (LC Paper No. CB(1)1355/17-18(02)), we do not consider it appropriate to set out the purposes of borrowings as “green public works projects” but leaving “green” undefined. The same issues and problems as elaborated in the said paragraphs will also arise by replacing “green public works projects” by a similar phrase “public works projects with environmental benefits” without defining the phrase “environmental benefits”. We are of the view that it is appropriate for the market and its relevant regulatory bodies to provide guidance, establish labelling scheme, etc. for “green” related financial products.

Amendments to Paragraph (a) regarding cost of issuance² and to Paragraph (b) regarding the Authority to expend money raised under the Proposed Resolution³

10. As elaborated in paragraph 2 above, Section 3(1) of the Loans Ordinance (“the Section”) provides the power for LegCo to authorize borrowing by the Government in terms of the amount or amounts of such borrowing and the purposes. It does not cover the power to authorize expenditure by the Government. Expenses incurred in relation to sums borrowed under the Proposed Resolution will be made in accordance with the provisions of the Capital Works Reserve Fund (Cap. 2A). The Section also specifies that the manner, terms, and conditions of borrowings are to be agreed by the Government and the person from whom the Government borrows.

11. The proposed amendments to paragraph (a) regarding interest and

² It refers to the amendments to paragraph (a) of the proposed resolution proposed by the Hon, Chu by adding “, provided that the interests and expenses of any other kind incurred on the borrowings shall not exceed one tenth of the amount of the borrowings and the Finance Committee shall be notified periodically of the amount of such interests and expenses” after “at any time”.

³ It refers to the amendments to paragraph (b) of the proposed resolution proposed by the Hon, Chu by adding “a specific account of” after “credited to” and adding “, that the exercising of powers, authorities and discretions of such an account by the Financial Secretary or any other delegated person shall be specified in a Resolution passed by the Council” after “Capital Works Reserve Fund”.

expenses in relation to borrowings under the proposed resolution, cannot be interpreted as “sums” or “purposes” of borrowings under the Section and are not consistent with the power and authority conferred on LegCo under the Section. Interest of a borrowing is a “term” of borrowing. The Section explicitly confers the power on the Government to agree on such term with the borrower.

12. As explained in paragraph 24 of the 1st Response, the cost of an issuance, including interest payments for the issuance, depends on a number of factors such as market conditions. At present, the yields for bonds issued by the Government are very low. However, according to information published by the Hong Kong Monetary Authority, the effective yield of 3-year and 5-year Exchange Fund Notes once exceeded 10% in 1998. As stated in paragraphs 22 and 23 of the 1st Response, the CWRP is placed with the Exchange Fund for investment purposes at a fixed rate determined every year. Under the existing mechanism, the Government will receive a fee at a minimum equivalent to the average annual yield of three-year Government Bond issued under the Government Bond Programme for the previous year. The cost of an issuance would be offset by fee received should the fund originally earmarked for projects approved by the Finance Committee (“FC”) of LegCo be placed with the Exchange Fund for investment purposes because the relevant projects are funded by sums raised under the Proposed Resolution.

13. We have already explained in paragraph 21 of the 1st Response that the Government has been preparing returns on CWRP including expenses incurred for government bonds issued in 2004 in the annual Estimates to be laid before LegCo in the annual budgetary exercise and will do so in respect of the relevant expenses in relation to sums raised under the proposed resolution, hence the Programme, if the proposed resolution is made by LegCo. Such information is also available in the Accounts of the Government published by the Director of Accounting Services. There is no need to include specified provisions to provide FC with information in relation to expenses incurred under the Proposed Resolution.

14. Similarly, the proposed amendments to paragraph (b) regarding the exercise of the powers, authorities and discretion in relation to CWRP also fall outside the scope of the power and authority given to LegCo under the Section. They do not concern the “sums” or “purposes” of the borrowings but the

authority to expend money of the CWRF which is governed by the Capital Works Reserve Fund, Cap. 2A. The Section does not empower LegCo to amend Cap. 2A.

15. In the same vein, the addition of a paragraph (c) to allow FC to define green public works projects before the issuance of the bonds also falls outside the power and authority conferred on LegCo under the Section to approve the “sums” and “purposes” of the borrowing.

Amendments to the Explanatory Note

16. As stated in the 2018-19 Budget speech and elaborated in the Explanatory Note, the Programme is a Budget initiative “to promote the development of green finance in Hong Kong”. The proposed additions /amendments to the Explanatory Note by Hon. Au are not part of the purposes of this Budget initiative as announced in the Budget Speech. The Explanatory Note in its original form is adequate to aid the understanding of the background of the Proposed Resolution.

17. As explained above, the Section only confers on LegCo the power to authorise the borrowing amount and purposes. The first part of the new paragraph (c) proposed by the Hon. Chu⁴ only provides for the background of the Proposed Resolution and should rather be featured in the Explanatory Note instead of the Proposed Resolution.

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⁴ It refers to the proposed addition of a paragraph (c) to the proposed resolution by the Hon. Chu by adding “This Resolution relates to the proposal in the 2018-19 Budget to promote green finance in Hong Kong through a green bond issuance programme, which will provide funding exclusively for green public work projects of the Government; and that, the adoption of definitions for green public works project, for the purpose of which bonds are issued, shall be considered and approved by the Finance Committee as a financial proposal before the issuance of the bonds. ”.