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FINANCIAL SERVICES BRANCH
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By Fax: 2877 5029

3 October 2018

Ms Vanessa CHENG
Legal Service Division
Legislative Council Complex
Legislative Council Secretariat
1 Legislative Council Road
Central
Hong Kong

Dear Ms Cheng,

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

Thank you for your letter of 11 September 2018 regarding the drafting of the Proposed Resolution. Our response is set out below.

The objectives of the resolutions made under section 3(1) of the Loans Ordinance (“the Ordinance”) (Cap. 61) by the Legislative Council (“LegCo”) referred to in Cap. 61A, Cap. 61B and Cap. 61C were mainly to address short and medium term issues in particular the anticipated financial shortfall of the Government in the short or medium term. The resolutions made under section 3(1) of the Ordinance for the purposes of the Bond Fund in 2009 and 2013 (being Cap. 61D and Cap. 61E respectively) (“the GBP Resolutions”) and the Proposed Resolution share a similar objective of developing certain segments of the financial market in Hong Kong in a long run. The said resolutions were drafted and presented in a way that would

best assist in achieving the respective objectives of the resolutions and, in the case of the Proposed Resolution, in view of its objective, it is presented in a way similar to the GBP Resolutions.

According to section 2 of the Ordinance, “borrow” includes the power to draw upon a credit facility. Credit facility refers to a wide range of financial and business arrangements. One of the most common types of credit facility is revolving credit facility. According to the Cambridge Dictionary, “revolving credit facility” means “an arrangement between a bank and a business that allows the business to *borrow a particular amount of money, and then to borrow more money if part of the original loan is paid back.*”

Section 3 of the Ordinance authorises the Government to borrow on such terms as may be agreed between the Government and any person. If the Government wishes to obtain a revolving credit facility from a bank in Hong Kong, the revolving nature of the credit facility in the sense that when part of the loan is paid off, the Government can borrow again is in effect one of the terms of the facility. Hence, section 3 can be construed as authorising the Government to obtain a revolving credit facility provided that the maximum amount and purposes of the credit facility are approved by LegCo.

In the present case, if the Proposed Resolution is approved by LegCo, depending on the number and size of issuances to be made under the Government Green Bond Programme (“the Programme”), the total value of the bonds issued under the Programme may exceed HK\$100 billion so long as the outstanding amount under the Programme does not exceed HK\$100 billion at any time.

Notwithstanding that the borrowing arrangements (as set out in paragraphs 4 to 7 of the LegCo brief) under the Programme could not, strictly speaking, be construed as a revolving loan agreement because the bond holders may not be the same persons (as in the case of a bank), given that section 3 allows the Government to obtain revolving credit facilities from a bank or more than one bank, it cannot be the intention of LegCo to prohibit the Government to issue bonds from time to time in a revolving nature.

We have explained the problems and drawbacks incorporating “green public works projects” as purposes of borrowings without defining “green” in the Proposed Resolution in paragraphs 5 and 6 of our response to the Subcommittee on 28 August 2018 (LC Paper No. CB(1)1355/17-18(01)). You may wish to refer to the said response for more details.

If you have further question, please call the undersigned or Mr Patrick Yung at 3655 5045.

Yours sincerely,



(Ms Estrella Cheung)
for Secretary for the Financial Services and the Treasury

c.c. Department of Justice
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