

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

**Response to Follow Up Issues Raised**

**Purpose**

This paper sets out the Administration's response to the issues raised after the third meeting of the Subcommittee on Proposed Resolution under Section 3(1) of the Loans Ordinance (Cap. 61) ("the Subcommittee") as set out in a document dated 5 October 2018.

**The Loans Ordinance (Cap. 61)**

2. As explained in paragraph 9 of the Government's response to the Subcommittee on 6 August 2018 (LC Paper No. CB(1)1316/17-18(02)), the Loans Ordinance, Cap. 61, ("the Ordinance") was enacted in 1975 by the then Legislative Council ("LegCo") to make provisions for the raising of loans by the Government. The said Ordinance introduced new provisions and authorities for raising loans by the then Hong Kong Government in addition to other applicable provisions to raise loans at the time.

3. As explained in our letter to the Assistant Legal Adviser on 3 October 2018 (LC Paper No. CB(1)1427/17-18(01)), 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.*" Since a "revolving credit facility" is a type of "credit facility", the ordinary meaning of "credit facility" naturally includes "revolving credit facility". In the absence of any provision in the Ordinance

carving out a “revolving credit facility” from the term “credit facility”, it is reasonable and proper to construe “a revolving credit facility” as falling within the definition of “borrow”.

4. Furthermore, the revolving nature of a credit facility in the sense that when part of the loan is paid off, the borrower can borrow again is in effect one of the terms of the facility. Hence, where section 3 authorises the Government to borrow on such terms as it may agree with any person, section 3 can reasonably be construed as authorising the Government to obtain a credit facility with a term that the facility is revolving in nature, provided that the maximum amount and purposes of the credit facility are approved by LegCo.

5. The speech of the then Financial Secretary in moving the Loans Ordinance provides the background of the Ordinance, which was enacted to provide legal authority to facilitate the raising of, including but not limited to the types of loans mentioned in the 1975-76 Budget, namely “issue of medium term Hong Kong dollar denominated bonds; recourse to the euro-currency credit market; a guaranteed line of credit to finance the purchase of goods and services from the United Kingdom; private placements”<sup>1</sup>. The background provided in the speech as well as the then Budget suggest that the word “credit” was intended to have a wide meaning. As far as we understand, revolving credit had been available from merchants since the time when banking service was not easily accessible, and has been available to consumers in the form of credit cards since the late 1950s. Thus, it was already a common type of credit/credit facility in 1975. With an aim to provide legal authority for obtaining lines of credit to finance the purchase of goods and services from the United Kingdom as mentioned in the speech, LegCo could not have intended to exclude this common type of credit facility with revolving nature. If this were LegCo’s intention, there should be express references in the Ordinance carving out or prohibiting revolving credit facility.

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<sup>1</sup> Paragraph 170-171 of the 1975-76 Budget Speech.

## **Legal Authority for the Proposed Resolution**

6. Provisions of both the Loans Ordinance, Cap. 61 and the Loans (Government Bonds) Ordinance, Cap. 64 include powers to issue bonds when they were first enacted in 1975. The Loans Ordinance was amended in 1991 to allow the issuance of bonds in a paperless form.

7. As explained in the relevant Legislative Council brief in 1991<sup>2</sup>, there is an obvious cost benefit in issuing debt instruments in paperless format than in written form. Besides, investors and the markets prefer instruments in paperless form over bearer bonds owing to a number of reasons such as convenience for trade, added security, etc. As a market development initiative, the Government plans to issue instruments in paperless form under the Government Green Bond Programme and therefore proposed a resolution by LegCo pursuant to section 3(1) of the Loans Ordinance, Cap. 61. A resolution pursuant to the Loans (Government Bonds) Ordinance, Cap. 64 could only facilitate the issuance of bearer bonds in paper form.

## **Review of Relevant Legislation**

8. As mentioned above, the Loans Ordinance, Cap. 61 was amended in 1991 to allow the raising of loans by the Government by the issuance of instruments in paperless form. It was further amended in 2014 to facilitate the issuance of a new type of instrument, namely alternative bonds. The provisions under the Loans (Government Bonds) Ordinance, Cap.64, are adequate to facilitate further issuance of bearer bonds by the Government. The Government at present does not have any intention to further issue bearer bonds including alternative bonds in bearer form. That said, we do not rule out the possibility that the Government may consider issuing bearer bonds in future should it be deemed necessary and justified having regard to all relevant factors and circumstances. The Government considers that both the Loans Ordinance and the Loans (Government Bonds) Ordinance are adequate to serve its

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<sup>2</sup> Paragraphs 2-7, Legislative Council Brief, Loans (Amendment) Bill 1991, Inland Revenue (Amendment) (No.4) Bill 1991, Stamp Duty (Amendment) (No.2) Bill 1991.

purposes and has no plan to update or revise the said Ordinances for the time being. Nevertheless, should there be a need (which is not foreseeable as of now) for the Government to consider issuing alternative bonds in bearer form in the distant future, the Government would consider whether and, if so, how the Loans (Government Bonds) Ordinance should be amended to enable us to make such an issuance.

**Financial Services and the Treasury Bureau**  
**12 October 2018**