



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China



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LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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URGENT

By Fax (2856 0922)

11 September 2018

Ms CHEUNG King Sing, Estrella
Prin AS for Financial Services &
the Treasury (Financial Services)
International & Mainland Affairs
Financial Services and the Treasury Bureau
Financial Services Branch
Financial Services Division
International and Mainland Affairs Division
24/F, Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

Dear Ms CHEUNG,

Subcommittee on Proposed resolution under section 3(1) of the Loans Ordinance (Cap. 61) ("the Proposed Resolution")

In the light of the Administration's response to questions and issues raised at the Subcommittee meetings, I should be grateful if you could clarify the following matters:

(1) It is noted that except for the resolution passed in 2013 (i.e. Cap. 61E which supersedes the previous resolution in 2009 (i.e. Cap. 61D)), the Proposed Resolution is drafted in terms different from those of other previous resolutions in Cap. 61A, Cap. 61B and Cap. 61C (all made under section 3(1) of the Loans Ordinance (Cap. 61)) in that the latter resolutions, unlike Cap. 61E and the Proposed Resolution, do not contain the reference to "from time to time" and "being the maximum amount of all borrowings made under this

paragraph that may be outstanding by way of principal at any time". Please clarify why the approach in Cap. 61A, Cap. 61B and Cap. 61C is not adopted in the Proposed Resolution, and explain how the borrowing transaction(s) under the Proposed Resolution, if passed, would operate in practice.

(2) It is also noted that in paragraph 10 of the Report of the Subcommittee on proposed resolution under section 3(1) of the Loans Ordinance (by way of issuance of Government Bonds) (LC Paper No. CB(1)1839/03-04), the Administration stated that the \$20 billion sought to be borrowed was an absolute ceiling and that if any portion of the amount worth of bonds issued has matured and has been redeemed, any further borrowing would have to be approved by resolution of LegCo. Hence, the approach adopted by the Administration in 2004 was to ask for fresh authorization for borrowing irrespective of whether any portion of the amount borrowed has been redeemed. In the light of the above, please explain why the same approach is not followed in the Proposed Resolution.

(3) According to paragraph 3 of the Legislative Council ("LegCo") Brief issued by the Financial Services and the Treasury Bureau on 6 June 2018 (File Ref: B&M/3/1/4C) on the Proposed Resolution, the Administration proposes that the borrowing ceiling, which refers to the maximum amount of outstanding principal (i.e. principal amount of bonds issued minus that of bonds matured) at any time under the Government Green Bond Programme, be set at HK\$100 billion, and that the proposed ceiling represents a long-term target over a long period of time (e.g. at least ten years).

(a) It is noted that under section 2 of Cap. 61, "borrow" includes the power to draw upon a credit facility. The term "credit facility" is not defined in Cap. 61 or in Cap. 1. As such, it would be useful to refer to the ordinary meaning of "credit facility". According to the Cambridge Dictionary, "credit facility" means an arrangement between a bank and a business that allows the business to borrow a particular amount of money for different purposes for a particular period of time. Applying the ordinary meaning of the term to the definition of "borrow" in section 2 of Cap. 61, please clarify whether and how the borrowing arrangement proposed in the Proposed Resolution falls within the definition of "borrow" for the purposes of Cap. 61.

- (b) Please clarify whether the Proposed Resolution, as drafted, might have the effect of empowering the Government to raise borrowings for an amount cumulatively which may exceed \$100 billion in total.
- (c) Please also clarify whether the Proposed Resolution would have the effect of authorizing the Government to enter into a revolving loan agreement with the result that the Government would be allowed to raise additional borrowings to top up the difference at any time following the maturity of the issued bonds (so long as the borrowing ceiling does not exceed \$100 billion in total at any particular point in time) without the need to ask for fresh authorization from LegCo.
- (d) If your answer to (c) is in the affirmative, please clarify whether it is the legislative intent of section 3(1) of Cap. 61 to provide for the power of borrowing on a revolving basis.

(4) 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 as stated in paragraph (c) of the Capital Works Reserve Fund ("CWRF"), not just green public works projects as stated in the LegCo Brief and the draft speech of the Secretary for Financial Services and the Treasury. Some members of the Subcommittee have also expressed the concern on the omission of the words "green public works projects" from the Proposed Resolution. According to the Administration's response at the meetings of the Subcommittee on 9 and 19 July 2018, under the existing mechanism, all public works projects funded by CWRF, including green public works projects, would require the approval of the Finance Committee ("FC") and thus there was no question of the Government circumventing the scrutiny of LegCo. To address members' concerns and to reflect the Administration's policy intent more clearly, will the Administration consider amending the Proposed Resolution to the effect that the Government be authorized to borrow from any person for the purposes of green public works projects as may be approved by FC?

As the Subcommittee will hold its next meeting on 18 September 2018, I would appreciate if you could let us have the Administration's reply in both English and Chinese **by close of play on 14 September 2018.**

Yours sincerely,


(Vanessa CHENG)
Assistant Legal Adviser

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Senior Assistant Legal Adviser 1
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