

立法會
Legislative Council

LC Paper No. CB(1)83/18-19

Ref.: CB1/SS/14/17

Paper for the House Committee meeting on 26 October 2018

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

Purpose

This paper reports the deliberations of the Subcommittee on Proposed Resolution under Section 3(1) of the Loans Ordinance (Cap. 61) ("the Subcommittee").

Background

2. 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 HK\$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 the Capital Works Reserve Fund ("CWRF") to provide funding for green public works projects of the Government. According to the Legislative Council ("LegCo") Brief (File Ref: B&M/3/1/4C), 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 Programme ("PWP").¹ 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.

¹ PWP 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.

The Proposed Resolution

3. On 6 June 2018, the Secretary for Financial Services and the Treasury ("SFST") gave notice to move a resolution under Section 3(1) of the Loans Ordinance (Cap. 61) at the LegCo meeting of 27 June 2018 ("the Proposed Resolution"). The Proposed Resolution seeks LegCo's approval to authorize the Government to borrow from time to time, from any person for the purposes of CWRP established by the Resolution published in the Gazette as Legal Notice No. 18 of 1982, sums not exceeding in total HK\$100 billion or equivalent, being the maximum amount of all borrowings made under the authorization that may be outstanding by way of principal at any time. The Proposed Resolution requires that the sums borrowed be credited to CWRP.

The Subcommittee

4. The House Committee agreed at its meeting on 15 June 2018 to form a subcommittee to study the Proposed Resolution. SFST has withdrawn the notice for moving the Proposed Resolution in order to allow time for the Subcommittee to study the Proposed Resolution.

5. The membership list of the Subcommittee is in **Appendix I**. Under the chairmanship of Ir Dr Hon LO Wai-kwok, the Subcommittee has held three meetings to meet with the Administration and receive views from deputations. A list of the organizations/individuals which/who have submitted views to the Subcommittee is in **Appendix II**.

Deliberations of the Subcommittee

6. The Subcommittee's deliberations are summarized in the ensuing paragraphs.

Legal authority for the Proposed Resolution

7. The Subcommittee notes that the Loans Ordinance under which the Proposed Resolution is to be made was enacted in May 1975 by the then LegCo to make provisions for the raising of loans by the Government. The Loans Ordinance introduced new provisions and authorities for raising loans by the then Hong Kong Government in addition to other applicable provisions for the Government to raise loans at the time including the Hong Kong Treasury Bills (Local) Ordinance (Cap. 74) and

the Loans (Asian Development Bank) Ordinance (Cap. 271). It was amended in 1991 to allow the raising of loans by the Government by the issuance of instruments in paperless form and was further amended in 2014 to facilitate the issuance of a new type of instrument, namely alternative bonds.

8. Noting that the provisions under the Loans (Government Bonds) Ordinance (Cap. 64) are adequate to facilitate issuance of bearer bonds by the Government, some members including Mr AU Nok-hin have sought explanation on why the Proposed Resolution is to be made under the Loans Ordinance instead of under the Loans (Government Bonds) Ordinance.

9. The Administration has advised that provisions of both the Loans Ordinance and the Loans (Government Bonds) Ordinance include powers to issue bonds when they were first enacted in 1975. However, there is an obvious cost benefit in issuing debt instruments in paperless form 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 Programme and therefore proposed a resolution by LegCo pursuant to section 3(1) of the Loans Ordinance. A resolution pursuant to the Loans (Government Bonds) Ordinance could only facilitate the issuance of bearer bonds in paper form. The Government at present does not have any intention to further issue bearer bonds including alternative bonds in bearer form. That said, the Administration does not rule out the possibility that it may consider issuing bearer bonds in future should it be deemed necessary and justified having regard to all relevant factors and circumstances.

Drafting approach of the Proposed Resolution as compared to previous resolutions made under section 3(1) of the Loans Ordinance

10. The Legal Adviser to the Subcommittee has pointed out that the resolutions made under section 3(1) of the Loans Ordinance for the purposes of the Bond Fund in 2009 and 2013 under the Government Bond Programme (being Cap. 61D and Cap. 61E² respectively) ("the GBP Resolutions") and the Proposed Resolution contain the references 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

² Cap. 61E supersedes Cap. 61D which was made in 2009.

time", which are not found in other previous resolutions in Cap. 61A, Cap. 61B and Cap. 61C (all made under section 3(1) of the Loans Ordinance). In contrast, in Cap. 61C passed by LegCo in 2004, the HK\$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.³ The Legal Adviser to the Subcommittee notes that 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. The Subcommittee has sought explanations from the Administration for not following the approach adopted in Cap. 61A, Cap. 61B and Cap. 61C in the Proposed Resolution.

11. The Administration has explained that the objectives of the resolutions made under section 3(1) of the Loans Ordinance by 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. In contrast, 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 serve to achieve 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.

12. The Legal Adviser to the Subcommittee notes 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 the Loans Ordinance in Cap. 61B and Cap. 61C for the purposes of CWRP, reference was made to "the Capital Works Reserve Fund established by resolutions passed under section 29 of the Public Works Ordinance (Cap. 2)". In response to the Legal Adviser to the Subcommittee's enquiries on the reason(s) for the different drafting approaches, the Administration explained that the way that CWRP as 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

³ See 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) submitted to the House Committee on 14 May 2004).

1982), the Administration considers that it should enable readers to identify the relevant legislative instrument that established CWRP more easily. The Legal Adviser to the Subcommittee considers that the way of referring CWRP in the Proposed Resolution will not give rise to interpretation difficulties.

Power to borrow under section 3(1) of the Loans Ordinance

13. Noting that the Proposed Resolution is drafted with the phrase of authorizing the Government to borrow "from time to time" and the Proposed Resolution might have the effect of empowering the Government to raise borrowings for an amount cumulatively exceeding HK\$100 billion in total, some members including Mr CHU Hoi-dick and Mr AU Nok-hin queried whether this is consistent with section 3(1) of the Loans Ordinance. Mr CHU Hoi-dick considers that the authorization under the Proposed Resolution should be confined to a single borrowing transaction with an amount not exceeding HK\$100 billion within a reasonable period of time.

14. The Administration has advised that section 3(1) of the Loans Ordinance requires the "sum or sums" and the "purposes" of loans to be approved by resolution of LegCo. The "manner", "terms" and "conditions" of such loans are to be agreed between the Government and the lenders and need not be approved by LegCo by way of resolution. Section 3(1) only requires the "sum or sums" and the "purposes" to be approved by resolution of LegCo. It does not preclude authorization for more than one single borrowing transaction subject to the terms of the resolution. The Government has assured members that the Proposed Resolution is consistent with the authority conferred by the Loans Ordinance. A resolution made and passed by LegCo pursuant to section 3(1) should remain valid unless it is repealed or replaced. Since the enactment of the Loans Ordinance in 1975, LegCo has made a number of resolutions for the purposes of CWRP under section 3 of the Loans Ordinance and they remain valid today.

15. Taking note of the Administration's explanation, some members including Mr AU Nok-hin and Mr CHU Hoi-dick have opined that the empowering of the Administration to issue bonds for an indefinite amount cumulatively is not reflected in, nor could be inferred from, the words "sum or sums" in the English text of section 3(1) of the Loans Ordinance and raised the issue of the interpretation of the terms "sum or sums" in section 3(1) and "from time to time" in the Proposed Resolution.

16. The Administration has advised that the present proposal of multiple issuances of green bonds is similar to the Government Bond Programme authorized by a previous resolution made under the Loans Ordinance. According to the Administration, the phrase "from time to time" or "不時" in Chinese is not defined in the Proposed Resolution or the Loans 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". The phrase "一筆或多筆" does not appear in the Loans Ordinance or in the Proposed Resolution. If the Proposed Resolution is approved by LegCo, depending on the number and size of issuances to be made under 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.

Meanings of "borrow" and "credit facility"

17. Members note that under section 2 of the Loans Ordinance, "borrow" includes the power to draw upon a credit facility. The term "credit facility" is not defined in the Loans Ordinance or in the Interpretation and General Clauses Ordinance (Cap. 1). When making reference to the ordinary meaning of the term, members note that 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. In this regard, some members including Mr CHU Hoi-dick and Mr AU Nok-hin, and the Legal Adviser to the Subcommittee have sought clarification on whether and how the borrowing arrangement proposed in the Proposed Resolution falls within the definition of "borrow" for the purposes of the Loans Ordinance; whether the Proposed Resolution as drafted might have the effect of empowering the Government to raise borrowings for an amount cumulatively which may exceed HK\$100 billion in total; and 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 HK\$100 billion in total at any particular point in time) without the need to ask for fresh authorization from LegCo. The Legal Adviser to the Subcommittee has sought clarification from the Administration on whether it is the legislative intent of section 3(1) of the Loans Ordinance to provide for the power of borrowing on a revolving basis.

18. The Administration has advised that "credit facility" in section 2 of the Loans Ordinance 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".

19. The Administration has further advised that section 3 of the Loans Ordinance authorizes the Government to borrow on such terms as may be agreed between the Government and any person. The revolving nature of a 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, the section can reasonably be construed as authorizing the Government to obtain a revolving credit facility provided that the maximum amount and purposes of the credit facility are approved by LegCo.

20. In further examining the background of the Loans Ordinance, members note from the speech of the then FS in moving the Loans Ordinance in 1975 that the Ordinance 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 of the then FS, 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". According to the Administration, the background provided in the FS's speech as well as the 1975-76 Budget suggest that the word "credit" was intended to have a wide meaning. It is the Administration's understanding that 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. The Administration contends that 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 1975-76 Budget Speech of the then FS, 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 Loans Ordinance carving out or prohibiting revolving credit facility.

21. Mr CHAN Chun-ying agrees with the Administration's interpretation above and considers that the term "guaranteed line of credit" referred to in the then FS's speech when moving the Loans Ordinance in 1975 had the same meaning as the term "credit facility", and that the term includes "revolving credit facility" is a common understanding in the banking industry of Hong Kong. Mr CHAN has observed that under the Small and Medium Enterprises Financing Guarantee Scheme which required approval by LegCo for the Government to provide a loan guarantee commitment of up to HK\$100 billion, a "revolving credit" arrangement was adopted so that after an enterprise had paid off a certain loan amount, such amount within the facility would be available again for borrowing by the same and/or other enterprises. By the same token, the issuance of bonds under the Programme with a similar effect of revolving credit facility under the Proposed Resolution is appropriate.

Absence of "green public works projects" in the wording of the Proposed Resolution

22. The Subcommittee notes that the Administration has explained in the Explanatory Note of the Proposed Resolution and the LegCo Brief the use of sums raised under the Programme on projects with environmental benefit under PWP. However, the Subcommittee notes that 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 PWP as stated in paragraph (c) of Capital Work Reserve Fund (Cap. 2A) in accordance with such conditions, exceptions and limitations as may be specified by the Finance Committee ("FC"), not just green public works projects as stated in the LegCo Brief and the draft speech of SFST. Some members including Mr CHU Hoi-dick and Mr AU Nok-hin have expressed concerns about the absence of a concise definition of "green" in green bonds. These members consider that without the key words indicating the Administration's legislative intent such as "green bonds" and "green public works projects" in the body text of the Proposed Resolution, it would be difficult to prevent the Administration from deviating from the intended purpose of promoting green finance in green bond issuances. They call for the inclusion of "green public works projects" as purposes of borrowings and a comprehensive set of green bond principles or framework in the wording of the Proposed Resolution.

23. Regarding the difference in the legal effect of Administration's legislative intent between being expressly provided in the body text of the Proposed Resolution and being stated in the Explanatory Note to it, the Legal Adviser to the Subcommittee has advised that in the event that there are ambiguities in the provisions of the Proposed Resolution, the court might refer to the relevant legislative materials of the Proposed Resolution including the Explanatory Note, the LegCo Brief and statements made by the responsible official of the Government in relation to the Proposed Resolution in LegCo as an aid in ascertaining the legislative intent of the Proposed Resolution.

24. To address the concern on the absence of the words "green public works projects" and to reflect the Administration's policy intent more clearly, Mr CHU Hoi-dick and the Legal Adviser to the Subcommittee have called on the Administration to amend 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 of LegCo.

25. The Administration has explained that the concept of green finance, as well as the underlying principles and mechanisms for assessment and evaluation, is at the nascent stage of development, and keeps on evolving as it attracts more public attention and increased investment from around the world. Currently, there are different international organizations issuing green bond standards and guidelines, serving as reference for green bond issuers and investors. These include, amongst others, the Green Bond Principles ("GBP") introduced by the International Capital Market Association ("ICMA")⁴ as voluntary process guidelines for issuing green bonds. Its latest version, GBP 2018, provides an indicative list of the most commonly used types of projects supported by or expected to be supported by the green bond market. The eligible green project categories include, but are not limited to, renewable energy, energy efficiency, pollution prevention and control, environmentally sustainable management of living natural resources and land use, terrestrial and aquatic biodiversity conservation, clean transportation, sustainable water and wastewater management, climate change adaptation, eco-efficient and/or circular economy adapted products, production technologies and processes, and green buildings which meet regional, national or internationally recognized standards or certifications.

⁴ The International Capital Market Association is a self-regulatory association for the international capital market with over 540 member institutions from more than 60 countries, including banks, issuers, asset managers, infrastructure providers, law firms, rating agencies and other market participants.

26. As advised by the Administration, the Climate Bonds Standard ("CBS"), sponsored by the Climate Bonds Initiative, is another set of more commonly-known international green bond criteria. The CBS version 2.1 requires that projects financed by an issuance should fall into one or more of the investment areas contained in the Climate Bonds Taxonomy which for the time being, include energy, low carbon building, industry and energy intensive commercial, waste and pollution control, transport, information technology and communications, nature based assets and water. It should be noted that these organizations frequently update their standards and guidelines as the market evolves. For example, ICMA held its annual conference in Hong Kong in June 2018 to seek endorsement of the latest standard, the GBP 2018. Other standards/guidelines may adopt different project categories and/or criteria. Meanwhile, many jurisdictions have developed their own domestic standards and guidelines.

27. Given the above background, the Administration has advised that as a market development initiative, the Programme must have a scope with sufficient flexibility so that it could evolve with the market globally and foster the opportunities brought by the development of green finance. In order to keep abreast of the global development of green finance, the Administration considers it necessary and justified to adopt a practical approach by making clear the Government's policy intention but without attempting to define "green" in the Proposed Resolution so that the Administration would not inadvertently undermine Hong Kong's development potential in green finance because of a green definition imposed under the resolution which may, with hindsight, become obsolete or overly narrow as the world's conception of what is green evolves over time. The Administration does not consider it appropriate to set out the purposes in the Proposed Resolution as "green public works projects" but leaving "green" undefined (because of the absence of a universally accepted definition for green) as it would cause uncertainty as to the scope of the Programme. In proposing the present practical approach, the Administration has had regard to the common approach adopted by other issuers who issue green bonds with reference to standards/guidelines under GBP, CBS, etc., which typically set out the types of projects or investment areas supported by green bonds.

Members' views on the wording of the Proposed Resolution

28. Regarding the repeated calls by some members for setting out the purposes in the Proposed Resolution by including the words "green public works projects", the Administration has responded that under the existing

mechanism, all public works projects funded by CWRP, including green public works projects, would require the approval of FC and thus there is no question of the Government circumventing the scrutiny of LegCo. The Administration maintains its stance that it has explained in the Explanatory Note of the Proposed Resolution and the LegCo Brief the use of sums raised under the Programme on projects with environmental benefit under PWP. The Administration has however undertaken to reiterate it again in the speech of SFST when moving the Proposed Resolution in LegCo and a similar approach was adopted in Cap. 61C. The Administration considers that this proposed approach would be able to give the required authority for the Government to launch the Programme to finance green projects under PWP, while at the same time, avoid challenges arising from the uncertainty of the meaning of "green".

29. Some members including Mr Holden CHOW have expressed support for the current drafting of the Proposed Resolution to provide the necessary flexibility for the Administration to implement the Programme. However, some other members including Mr CHU Hoi-dick, Mr AU Nok-hin and Dr CHENG Chung-tai remain unconvinced and reiterate their concerns about the lack of clarity and restraints in the wording of the Proposed Resolution on the Government to confine its use of the proceeds from green bonds to the promotion of environmental-friendly projects.

Use and management of proceeds from green bonds

30. In the course of deliberations, members have compared the mechanisms for green bond issuance between the Hong Kong Government and governments of other jurisdictions and have sought information on cases of green bonds issued by governments of other jurisdictions, with the amounts of funds raised and commitments to emission reduction.

31. The Administration has provided the information requested by members and advised that the approach of green bond issuances to be adopted by the Government is very similar to other sovereign green bond issuances. According to the Administration, it has not been a requirement under prevailing green bond standards/guidelines for issuers to make corresponding carbon reduction commitment in relation to their green bond issuances and there is not any such corresponding commitment made by other governments in relation to the green bonds they have issued so far.

32. The Administration has reiterated that sums raised under the Programme and the Proposed Resolution will be credited to CWRF to finance projects with environmental benefits under PWP approved by FC of LegCo under the existing mechanism. The Administration will continue to employ the existing arrangements to administer and manage money of CWRF regarding money raised under the Programme and credited to CWRF.

33. The Administration has assured members that 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 to enhance transparency under the Programme. According to the Administration, 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.

Use of Capital Works Reserve Fund to pay interest and expenses

34. Members note that the cost of an issuance under the Programme depends on a number of factors including the structure, terms and parameters of the issuance such as tenor, size, currency, credit rating, etc. and the market condition at the time of issuance such as interest rate, investor appetite, etc. As an indication, the annualized yield of a government bond issued under the Government Bond Programme on 12 July 2018 is 2.391%. According to market information, expenses relating to a bond issuance to institutional investors may amount to about 0.5 to 1% of the issuance size. The cost and expenses for a retail issuance are expected to be higher.

35. Members note that the interest and expenses incurred by green bond issuances are to be paid out of CWRF pursuant to subparagraph (d)(ii) of Cap. 2A which authorizes FS to repay the principal, interest thereon and expenses incurred in relation to sums borrowed under section 3 of the Loans Ordinance where such sums have been credited to the CWRF. Some members including Mr CHU Hoi-dick and Mr AU Nok-hin have expressed concerns about the lack of a mechanism for FC to scrutinize or approve the payment of interest and expenses arising from bond issuance and that no relevant limits have been specified in the Proposed Resolution

or elsewhere. To these members, this undermines LegCo's power of monitoring the Government. These members have queried whether subparagraph (d)(ii) of Cap. 2A is consistent with Article 73(3) of the Basic Law which provides the power of LegCo to approve taxation and government expenditure.

36. The Administration has advised that money of CWRF has been expended in accordance with subparagraph (d)(ii) of Cap. 2A in relation to expenses incurred for government bonds issued in 2004 pursuant to a LegCo resolution made under section 3(1) of the Loans Ordinance in 2004. The Government has been preparing returns on CWRF including such expenditure 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. The Government considers that the arrangement is consistent with the Basic Law including Article 73(3) in relation to taxation and government expenditure.

37. The Administration has advised that section 3(1) of the Loans Ordinance provides the power for 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 Cap. 2A.

Effect of purported green projects on LegCo's scrutiny of public works projects

38. Some members including Mr AU Nok-hin and Dr CHENG Chung-tai have expressed concerns about the possibility of a green bond market giving rise to "greenwashing" – where organizations would, through the issuance of green bonds, recast projects as environmentally-friendly as a sugarcoating strategy. In particular, Mr CHU Hoi-dick is concerned that the Administration may earmark the proceeds of a specific green bond issuance for a particular green works project, thereby imparting a favourable impression to the public in respect of controversial works projects with self-purported environmental benefits. These members are concerned that FC's scrutiny of these projects may in this way be unduly affected. Mr CHU has urged the Administration to amend the Proposed Resolution, or state in the speech of SFST when moving the Proposed Resolution in Council, to expressly undertake not to earmark proceeds raised by green bonds for any specific

public works projects before they are considered or approved by FC. This can serve as a safeguard against the possibility, if any, of the Administration's manipulating LegCo's scrutiny of public works projects.

39. The Administration has advised that only projects under the PWP that were approved by FC under the existing mechanism might be considered to be funded by green bonds under the Programme. Projects approved by FC would be assessed and selected against the project categorization and criteria under the standards/guidelines adopted for a particular issuance as well as other relevant factors. The proceeds from a particular issuance may be used to finance at least one public works project with environmental benefit. The Administration has assured members that there is no question of the Government circumventing or manipulating the scrutiny of public works projects by LegCo.

Availability of green bonds to retail investors

40. Considering that the Hong Kong Government is known for its financial prudence and green bonds issued under the Programme involves practically no credit risk, Mr WU Chi-wai has urged the Administration to extend the sale of green bonds to retail investors instead of targeting institutional investors only.

41. On Mr WU's suggestion, the Administration has advised that green bonds are rather new to the market and more sophisticated comparing to their conventional counterparts. Most of the green bonds so far issued in the global and domestic markets mainly target institutional investors. The current green investor base in Hong Kong consists of primarily institutional investors and is relatively small. To promote the development of green finance and attract international investors to use Hong Kong for green financing and investing, the Administration considers that it should follow the best and most common international practices, and target the most influential international green investors. The Administration therefore considers that Government green bonds issued under the Programme should, at least for the initial tranches, target at institutional investors. The Administration hopes that the Programme would help arouse the interest of retail investors and build up their knowledge and understanding on green bonds. The Administration will monitor the development of green finance in both the global and domestic markets and review the arrangement when it has gained more experience in green bond issuance having regard to relevant considerations.

Other concerns

42. In the course of deliberations, members note in the Report of the Subcommittee on the proposed resolution under section 3(1) of the Loans Ordinance (by way of issuance of Government Bonds)⁵ that the Administration agreed to that Subcommittee's suggestion that it should take steps to review whether any parts of the Loans Ordinance and the Loans (Government Bonds) Ordinance had become obsolete or outdated having regard to the market situation. As a follow-up on the suggestion, members have taken the opportunity to enquire whether the Administration had reviewed or would review the two Ordinances.

43. The Administration has advised that the Government considers that both the Loans Ordinance and the Loans (Government Bonds) Ordinance are adequate to serve their 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 the Government to make such an issuance.

Proposed amendments to the Proposed Resolution

44. The Administration will not propose any amendments to the Proposed Resolution.

45. The Subcommittee has received proposed amendments to the Proposed Resolution from Mr CHU Hoi-dick and Mr AU Nok-hin.⁶ These amendments are mainly related to purposes of borrowing, valid period of authorization, cost of borrowings and the authority to expend the sum(s) raised. The proposed amendments have been presented by the respective members at a meeting and the Administration has given its response on the proposed amendments.⁷ The Subcommittee has decided not to move any of the proposed amendments.

⁵ See LC Paper No. CB(1)1839/03-04.

⁶ See LC Paper Nos. CB(1)1394/17-18(01) and CB(1)1394/17-18(03).

⁷ See LC Paper No. CB(1)1427/17-18(01).

Recommendation

46. The Subcommittee notes that the Administration will give fresh notice for moving the motion to seek LegCo's approval of the Proposed Resolution at the Council meeting of 14 November 2018, and raises no objection to the arrangement.

Advice sought

47. Members are invited to note the deliberations of the Subcommittee as set out above.

Council Business Division 1
Legislative Council Secretariat
24 October 2018

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

Membership list

| | |
|----------------------|---|
| Chairman | Ir Dr Hon LO Wai-kwok, SBS, MH, JP |
| Members | Hon James TO Kun-sun Hon Abraham SHEK Lai-him, GBS, JP Hon WONG Ting-kwong, GBS, JP Hon CHAN Kin-por, GBS, JP Hon Paul TSE Wai-chun, JP Hon Frankie YICK Chi-ming, SBS, JP Hon WU Chi-wai, MH Hon YIU Si-wing, BBS Hon CHAN Chi-chuen Hon Kenneth LEUNG Hon KWOK Wai-keung, JP Hon Dennis KWOK Wing-hang Hon Christopher CHEUNG Wah-fung, SBS, JP Dr Hon Fernando CHEUNG Chiu-hung Dr Hon Elizabeth QUAT, BBS, JP Hon CHU Hoi-dick Dr Hon Junius HO Kwan-yiu, JP Hon HO Kai-ming Hon Holden CHOW Ho-ding Hon CHAN Chun-ying, JP Hon Tanya CHAN Hon CHEUNG Kwok-kwan, JP Hon HUI Chi-fung Hon LUK Chung-hung, JP Dr Hon CHENG Chung-tai Hon AU Nok-hin Hon Vincent CHENG Wing-shun, MH |
| | (Total : 28 members) |
| Clerk | Mr Derek LO |
| Legal Adviser | Ms Vanessa CHENG |

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

**List of the organizations/individuals which/who have given views to
the Subcommittee**

1. Credit Agricole Corporate and Investment Bank
2. Deloitte China
3. Dr CHOW Sung-ming
4. Financial Services Development Council
5. Green Sense
6. HK Green Finance Task Force; HK Green Finance Association; GPS Legal LLP
7. Hong Kong Quality Assurance Agency
8. International Capital Market Association
9. Liber Research Community
10. Liberal Party
11. Miss CHAN Ka-lam
12. Miss CHAN Po-ying
13. Miss FUNG Siu-yin
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