立法會
Legislative Council

LC Paper No. LS 80/00-01

**Paper for the House Committee Meeting
of the Legislative Council
on 27 April 2001**

**Legal Service Division Report on
Revenue (No. 3) Bill 2001**

Object of the Bill

To give effect to certain revenue proposals in the Budget for the financial year commencing on 1 April 2001.

LegCo Brief Reference

2. FIN CR 3/7/2201/00 issued by the Finance Bureau on 4 April 2001.

Date of First Reading

3. 25 April 2001.

Comments

Summary of proposals

4. We have prepared a table at **Annex A** setting out the legal effect of the Bill and the corresponding parts of the Budget Speech delivered by the Financial Secretary on 7 March 2001 to which the proposals are referred.

Levy Adjustment

5. Paragraphs 2 and 12 of the LegCo Brief refer to the proposal in the Budget Speech to increase the existing levy on securities transactions by 0.002 percentage point. In the Budget Speech, the transaction levy is proposed to be increased from 0.01 per cent to 0.012 per cent. Clause 2 of the Bill, on the other hand, proposes to reduce the levy from 0.01 per cent to 0.007 per cent. The

difference of 0.005 per cent is the portion of levy retained by the Stock Exchange Company which is proposed to be reduced to 0 per cent under Clause 3 of the Bill.

6. Under section 52 of the Securities and Futures Commission Ordinance (Cap. 24), for every purchase and sale of securities recorded on the Unified Exchange or notified to it under the rules, a levy is payable to the Securities and Futures Commission ("SFC") by each of the purchaser and the seller at the rate of 0.01 per cent of the consideration. The Stock Exchange Company shall collect and account to the Commission for the levy, after having retained 50% of such levy (i.e. 0.005 per cent).

7. According to paragraphs 6 and 7 of the LegCo Brief, the Administration considers it no longer justifiable for the Stock Exchange Company to rely on statutory levy as a source of income. Agreement has been reached for the Stock Exchange Company to substitute its share of levy with a trading fee. The net result is that each of a purchaser and a seller of a securities transaction is liable to pay a levy at the rate of 0.007 per cent i.e. the original levy to SFC (0.005 per cent) subject to an increase proposed under the Bill (0.002 per cent).

New Investor Compensation Fund

8. Both paragraph 12 of the LegCo Brief and paragraph 83 of the Budget Speech specify that the purpose of the proposed increase in levy is to set up a new Investor Compensation Fund ("the Compensation Fund"). The Compensation Fund would be established under Part XII of the Securities and Futures Bill ("SF Bill") and Rules ("the related Rules") in relation to the Fund would be made by the Chief Executive in Council and SFC respectively.

9. The following arrangements have been agreed between the Administration and SFC :

(a) Before the Compensation Fund exists, SFC would, with the approval of the Financial Secretary, pay into the Unified Exchange Compensation Fund ("UECF") established under section 99 of the Securities Ordinance (Cap. 333) from its reserves such sum of money representing the income received from the proposed additional levy of 0.002 per cent.

(b) After the Compensation Fund is established, SFC would, under section 72 of Schedule 9 of the SF Bill, pay into the Fund such sum of money from UECF as it considers appropriate, having regard to the amount necessary to meet any claims under UECF and refund of deposits to the Stock Exchange Company.

10. According to the Administration, the legislative passage of the SF Bill is independent from that of this Bill. It is intended that the proposed levy increase in this Bill will operate before the making of the related Rules. The Administration considers it prudent to start building up the balance under UECF to allow the Compensation Fund to reach the target of HK$1 billion at an earlier date.

11. Since the purpose of the proposed levy increase is to build up the balance under UECF so that a bigger amount may be transferred to the Compensation Fund when established, it would seem logical that this Council approves the setting up of the Compensation Fund under the SF Bill before approving the levy increase proposed in this Bill. Hence, we would advise that the remaining legislative proceedings on the SF Bill should precede those on this Bill. We would, however, confirm that from a legal point of view, it is possible for the proposals in the Bill to come into operation before the making of the related Rules and the establishment of the Compensation Fund. Members may refer to our correspondence with the Administration at **Annex B**.

12. The Bill does not impose any restriction as to when the increase will cease to take effect even though it is the policy intent that the increase will last until the Compensation Fund has accumulated HK$1 billion. The period of time required would depend on the market turnover, recoveries and the number of default cases. The Administration would introduce legislative amendments to remove the additional levy when the target is reached. For Members' information, the balance for transfer to the Compensation Fund is estimated to be HK$655 million as at the end of the year 2000.

Trading Fee

13. According to paragraph 7 of the LegCo Brief, the Stock Exchange Company has proposed to introduce a trading fee of 0.005% of the consideration payable by each of the purchaser and the seller of a securities transaction. Although the trading fee is not a statutory fee, the written approval of SFC has to be obtained. Such trading fee would be subject to review by the SFC and the Stock Exchange Company after a year of its coming into effect.

Commencement

14. The proposals in the Bill will come into effect on a day to be appointed by the Secretary for the Treasury by notice published in the Gazette. According to paragraphs 15 and 16 of the Brief, the Administration intends to implement the levy adjustment and the stamp duty reduction at the same time in July 2001.

Public Consultation

15. The proposed increase in levy was mentioned by the Financial Secretary in paragraph 83 of the Budget Speech as one of the details on which SFC will consult the public. SFC issued a consultation paper on the Compensation Fund on 7 March 2001 and the consultation period lasted for one month. A summary of the comments received insofar as the proposed levy increase is concerned is set out at **Annex C**.

Consultation with the LegCo Panel

16. The consultation paper mentioned in paragraph 15 above was circulated to Members of the LegCo Panel on Financial Affairs and the Bills Committee on Securities and Futures Bill and Banking (Amendment) Bill 2000 on 8 March 2001.

Conclusion

17. Members may wish to set up a Bills Committee to study the Bill, in particular the administrative arrangements that accompany the Bill and the order of its legislative proceedings in relation to the SF Bill.

Encl

Prepared by

Wong Sze-man, Bernice
Assistant Legal Adviser
Legislative Council Secretariat
25 April 2001

Bill/B/35/00-01

Annex A

Revenue (No. 3) Bill 2001

Clauses of the Bill	**Paragraphs in the 2001-2002 Budget Speech**	**Legal Effect**
Clause 2	Paragraph 83	The Securities and Futures Commission (Levy) (Securities) Order (Cap. 24 sub. leg.) would be amended to revise the rate of levy from 0.01% to 0.007% of the consideration of purchase and sale payable by each of the purchaser and the seller in respect of securities transaction recorded on the Unified Exchange or notified to it.
Clause 3	Not applicable	The Securities and Futures Commission (Levy) (Securities) Order (Cap. 24 sub. leg.) would be amended to reduce the percentage of the levy to be retained by the Stock Exchange Company from 50% to 0%.
Clause 4	Paragraph 82	The Stamp Duty Ordinance (Cap. 117) would be amended to reduce the rate of stamp duty payable on : (a) contract notes for the sale or purchase of Hong Kong stock from $1.125 for every $1,000 or part thereof to 0.1%; (b) transfer operating as a voluntary disposition inter vivos or made for the purpose of effectuating a transaction whereby the beneficial interest in Hong Kong stock passes otherwise than on sale and purchase, from $2.25 for every $1,000 or part thereof to 0.2%.

Annex B

LS/B/35/00-01
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9 April 2001

BY FAX
Fax No. : 2530 5921
Total no. of pages : 2

(Attn : Ms Esther Leung
Principal Assistant Secretary)

Dear Esther,

Revenue (No. 3) Bill 2001

I am scrutinizing the legal and drafting aspects of the above Bill on behalf of Members and write to seek your clarification on the proposed increase in transaction levy.

Paragraphs 2 and 12 of the LegCo Brief refer to the proposal in the Budget Speech to increase the existing levy on securities transactions by 0.002 percentage point for the purpose of setting up a new Investor Compensation Fund ("the Compensation Fund") for a limited period of time until such fund has accumulated $1 billion.

1. The proposed increase in levy was mentioned by the Financial Secretary in paragraph 83 of the Budget Speech as one of the details on which the Securities and Futures Commission will consult the public. Please clarify whether consultation has been carried out since then, and if so, the outcome of such consultation.

2. The Bill does not impose any restrictions as to when the increase will cease to take effect, i.e. when the Compensation Fund has accumulated $1 billion (paragraph 83 of the Budget Speech and paragraph 12 of the LegCo Brief refer). When does the Administration expect the Compensation Fund to grow to this amount and what actions will it take then?

3. The Compensation Fund is proposed to be set up under the Securities and Futures Bill and rules in relation to the Fund would be made by the Chief Executive in Council and the Securities and Futures Commission. Please confirm whether it is the policy intent :

(a) that the remaining legislative proceedings on the Securities and Futures Bill should precede those on the Revenue (No. 3) Bill 2001;

(b) that the Revenue (No. 3) Bill 2001 will come into operation in July 2001 (as suggested in paragraph 16 of the LegCo Brief) regardless of whether the Rules in relation to the Compensation Fund have been made or not.

4. In the Budget Speech, the transaction levy is proposed to be increased from 0.01 per cent to 0.012 per cent. The Bill, on the other hand, proposes to reduce the levy from 0.01 percent to 0.007 per cent, having taken into account the removal of the portion of levy retained by the Stock Exchange of Hong Kong (SEHK). According to paragraph 7 of the LegCo Brief, this agreement has been reached following discussions with the SEHK, who proposed to introduce a trading fee of 0.005% per side of the consideration of transaction. Please clarify whether legislative amendments would be introduced to give effect to this proposal.

In order to facilitate my preparing the report on the Bill to the House Committee, I shall be grateful if you would let me have your reply before 19 April 2001.

Yours sincerely,

(Bernice Wong)
Assistant Legal Adviser

c.c. LA

D of J (Mr K F Cheng, SALD)
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Our Ref. : FIN CR 5/7/2201/00
Your Ref. : LS/S/20/00-01, LS/B/32/00-01

20 April 2001

Ms Bernice Wong
Assistant Legal Adviser
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Bernice,

Revenue (No.3) Bill 2001

Thank you for your letter dated 9 April 2001. Having consulted the Financial Services Bureau, I would like to respond to your questions on the proposed increase in transaction levy as follows please:-

(a) Public consultation

The Securities and Futures Commission (SFC) issued a consultation paper on the proposed new investor compensation arrangements on 7 March and the consultation period ended on 6 April. Comments have been received from ten entities, including the Consumer Council, Hong Kong Stockbrokers Association, Hong Kong Securities Institute, Hong Kong Institute of Company Secretaries, Hong Kong Association of Banks, four financial intermediaries and one individual. There is general support for the new compensation scheme, as widely reported in the media.

(b) Duration for the proposed increase in levy

The proposed levy is intended to last until the new compensation fund has accumulated HK$ 1 billion. The period of time required for reaching this target would depend on the market turnover, which affects directly the levy income. It also depends on recoveries and whether there would be further default cases from now on. We hope that the HK$ 1 billion target would be achieved as soon as possible, possibly within a few years if there are no further major default cases. After this target is reached, we intend to remove the additional 0.002 percentage point in the levy through amendments to the relevant rules on the levy.

(c) Interface with the Securities and Futures Bill (SF Bill)

It is our intention to have the SF Bill enacted as early as possible. The legislative passage of the SF Bill is independent from that of the Revenue (No.3) Bill. As set out in paragraph 12 of the LegCo Brief, the new Fund is planned to be set up after the enactment of the SF Bill. Prior to this, we consider it prudent to start building up the balance under the existing Unified Exchange Compensation Fund (UECF) so that a bigger amount may be transferred to the new Fund when established. This will allow the new Fund to reach the HK$ 1 billion level at an earlier date. It is for this purpose that we propose to increase the existing levy on securities transactions and to pay the additional monies to the UECF before the new Fund is established. Thus, the proposed levy increase in the Revenue (No.3) Bill is intended to operate before the making of rules in relation to the new compensation Fund under the SF Bill. Subject to the passage of the Revenue (No.3) Bill through the LegCo, we intend to implement the new levy in July 2001. This will allow time for the Stock Exchange and the industry to make necessary adjustments to their operation systems.

(d) Proposed introduction of a trading fee by the Stock Exchange

According to section 15 of the Exchanges and Clearing Houses (Merger) Ordinance (Cap.555), no fee shall be imposed by the Stock Exchange unless with the approval in writing by the SFC. No legislative amendment will be required to give effect to the introduction of the trading fee by the Stock Exchange as the trading fee is not a statutory levy. The proposed introduction of a trading fee by the Stock Exchange, however, will be subject to approval by the SFC.

Please let me know if you need any further clarifications on the proposal.

Yours sincerely,

(Miss Maisie Chan)
for Secretary for the Treasury

c.c. FSB (Attn: Ms Salina Yam)
SFC (Attn: Mr Mark Dickens)
Law Draftsman (Attn: Mr K F Cheng)

Annex C

New Investor Compensation Arrangements
Comments received during the consultation period
on the proposed increase in levy

The Securities and Futures Commission received 10 submissions from market participants and interested parties on the proposed investor compensation arrangements, of which one respondent specifically support the proposed addition of 0.002 percentage point to the levy. Five respondents however express concerns that institutional investors would have to pay for the additional levy although they would not be covered by the new scheme, with one adding that the increase may affect trading volumes.

We believe that the new fund should have its assets built up to the size of $ 1 billion as soon as possible in order that it could provide prudential protection to investors. The most efficient way to reach this target is through an increase in levy. The increase is not meant to be long term in nature and is intended to cease after the $ 1 billion target is reached. Meanwhile, overall transaction costs will fall with the decrease in stamp duty, thus more than offsetting the impact of the 0.002% levy. On balance, we believe the overall arrangement is fair. It is also the case that previous funding for the existing compensation fund has come partly but indirectly from the transaction levy through the contributions by SFC and the stock exchange.

Even if we were to include institutional investors (e.g. licensed persons, recognized exchange company, recognized clearing house) within the coverage of the new fund, they would nevertheless be subject to the $150,000 compensation limit, which would in our view not be a meaningful amount of compensation. Whilst one could consider an exemption from the 0.002% levy for institutional investors, this would partially defeat the purpose of reaching the $1 billion target relatively quickly and would also be administratively difficult to implement.