

立法會
Legislative Council

LC Paper No. LS 68/01-02

**Paper for the House Committee Meeting
of the Legislative Council
on 22 March 2002**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 12 March 2002**

Date of Tabling in LegCo : 13 March 2002

Amendment to be made by : 10 April 2002 (or 17 April 2002 if extended by resolution)

Public Finance Ordinance (Cap. 2)

Revenue (Variation and Reduction of Fees and Charges) Order 2002 (L.N. 35)

This Order was made by the Chief Executive under section 39A(a) of the Public Finance Ordinance (Cap. 2) after consultation with the Executive Council to give effect to certain revenue proposals announced in the Budget Speech delivered by the Financial Secretary on 6 March 2002.

Section 39A(a) of the Public Finance Ordinance

2. Under section 39A(a), any fee or charge made payable by or under any Ordinance to the Government or to any public body or public officer, not being a fee or charge which is regulated by rules of court, may be reduced or varied by order of the Chief Executive: provided that no variation thereof shall cause such fee or charge to exceed the original figure.

Legal effect of the Order

3. According to section 1 of the Order, the Order shall come into operation on 1 April 2002. Members may refer to LegCo Brief File Ref : FIN CR 4/7/2201/01 dated 12 March 2002 issued by the Finance Bureau for background information.

A. Waiver of business registration fee

4. Section 3 of the Order gives effect to the proposal contained in paragraph 91 of the Budget Speech. The fees payable under the Business Registration Ordinance (Cap. 310) in respect of business registration certificates and branch registration certificates commencing on or after 1 April 2002 and before 1 April 2003 would be waived to the extent of \$2000 and \$73 respectively.

B. Reduction of water charges

5. Section 4 of the Order gives effect to the first proposal contained in paragraph 90 of the Budget Speech. The charges for use of fresh water payable under the Waterworks Regulations (Cap. 102 sub. leg.) in respect of the period commencing on 1 April 2002 and ending on 31 March 2003 would be reduced by deducting from the charges :

- (a) for non-domestic purposes, an amount not exceeding \$3,200;
- (b) for domestic purposes (other than flushing), an amount not exceeding \$800; and
- (c) for flushing purposes, an amount not exceeding \$800.

6. The Order also provides for a maximum amount allowed to be deducted in respect of each bill of charges for a 1-month and a 4-month period of supply. Any remainder of the amount allowed which is not utilized in the payment of that bill shall be carried forward and set off against the charges payable in the subsequent bill of charges within the concessionary period.

C. Reduction of sewage charges

7. Section 5 of the Order gives effect to the second proposal contained in paragraph 90 of the Budget Speech. The amount of sewage charges payable pursuant to section 2 of the Sewage Services (Sewage Charge) Regulation (Cap. 463 sub. leg.) in respect of the period commencing on 1 April 2002 and ending on 31 March 2003 would be reduced by deducting from the charges :

- (a) for non-domestic purposes, an amount not exceeding \$800; and
- (b) for domestic purposes, an amount not exceeding \$200.

8. The Order also provides for a maximum amount allowed to be deducted in respect of each bill of charges covering a 1-month and a 4-month period of charges. Any remainder of the amount allowed which is not utilized in the payment of that bill shall be carried forward and set off against the charges payable in the subsequent bill of charges within the concessionary period.

D. Reduction of trade effluent surcharges

9. Section 6 of the Order gives effect to the third proposal contained in paragraph 90 of the Budget Speech. The amount of trade effluent surcharge payable pursuant to sections 3 and 4 of the Sewage Services (Trade Effluent Surcharge) Regulation (Cap. 463 sub. leg.) in respect of the period commencing on 1 April 2002 and ending on 31 March 2003 would be reduced by 30%.

E. Clarification by the Administration

10. We have sought clarifications from the Administration on the legal and drafting aspects of the Order. A copy of our letter dated 13 March 2002 has been circulated to Members (LC Paper No. CB(2) 1351/01-02 refers) and the Administration's reply is at the **Annex**.

LegCo's power to amend the Order

11. Under section 34(2) of the Interpretation and General Clauses Ordinance (Cap.1), Members may amend subsidiary legislation in any manner whatsoever consistent with the power to make such subsidiary legislation. Consistent with the power of the Chief Executive to make the order under section 39A(a) of the Public Finance Ordinance, Members may amend (which includes repeal) the Order provided that no amendment shall cause the relevant fee or charge to exceed the original figure.

12. There is no Council meeting before the commencement of the Order on 1 April 2002. If Members pass a resolution amending or repealing the Order after the commencement date of the Order, the Order shall, without prejudice to anything done thereunder, be deemed to be amended or repealed as from the date of publication in the Gazette of such resolution.

Encl

Prepared by

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20 March 2002

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Our Ref. : FIN CR 4/7/2201/01
Your Ref. : LS/S/24/01/02

20 March 2002

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Dear Ms Wong,

**Revenue (Variation and Reduction of
Fees and Charges) Order 2002 (L.N. 35 of 2002)**

I refer to your letter of 13 March 2002 and set out below our response to the questions raised in your letter.

Legislative intent of section 39A of the Public Finance Ordinance

Our records show that when the concerned clause first appeared, it was included as section 96 of the Interpretation and General Clauses Ordinance (Cap. 1) enacted in 1966. The clause was modelled on section 54 of the Sarawak Interpretation Ordinance and the intention was to give wider power to the Governor to reduce fees and charges. This clause was subsequently transferred to the Public Finance Ordinance (Cap. 2) by virtue of the Interpretation and General Clauses (Amendment) (No. 2) Ordinance 1993 for the reason that Cap. 2 was considered the more appropriate Ordinance for that provision.

We are not aware of any order having been made under section 39A(a) of Cap. 2 or the former section 96 of Cap. 1 in the past.

As regards section 39A(b) of Cap. 2, the Administration has in the past invoked the power under this section to remit or refund, in whole or in part, fees or charges based on the merits of individual cases. For example, the fee for replacing a Hong Kong Special Administrative Region passport was remitted upon application where the passport was damaged by chemicals not due to the fault of the passport holder.

The use of section 39A of the Public Finance Ordinance to effect the proposed one-off concessions

Section 39A(a) of Cap. 2 has provided clear and express power to the Chief Executive to reduce or vary, by way of order, “any fee or charge made payable by or under any Ordinance to the Government”, subject to the restriction that “no variation thereof shall cause such fee or charge to exceed the original figure”. Section 39A(a) is therefore clearly applicable to our present circumstances, viz. to waive business registration fees provided under the Business Registration Ordinance (Cap. 310); and reduce water charge, sewage charge, fresh water flushing charge and trade effluent surcharge provided under the Waterworks Ordinance (Cap. 102) and the Sewage Services Ordinance (Cap. 463). Our proposed variations would not cause the fees and charges concerned to exceed their original figures.

We acknowledge that there are provisions in the Waterworks Ordinance (Cap. 102), the Sewage Services Ordinance (Cap. 463) as well as the Business Registration Ordinance (Cap. 310) which enable regulations to be made in respect of charges payable or granting of exemption from payment of fees. However, as the proposed business registration fee waiver and the proposed water and sewage charges reductions are intended to be a one-off package providing for a time-limited relief to the community in the current economic downturn, we consider it appropriate to engage the general power of the Chief Executive to make the Revenue (Variation and Reduction of Fees and Charges) Order 2002 under section 39A(a) of the Public Finance Ordinance to achieve the purpose, so that the public will have a clearer,

overall picture of the intention of the Administration. The necessary Order has been published as subsidiary legislation and is subject to scrutiny by the Legislative Council.

In relation to the waiver of business registration fees (as indeed the same with the reduction of water and sewage charges), the making of the Revenue (Variation and Reduction of Fees and Charges) Order 2002 would not remove the powers of the Legislative Council (LegCo) to scrutinise the fee waiver proposal. As stated above, the Order made by the Chief Executive under section 39A(a) of Cap. 2 has been published as subsidiary legislation subject to scrutiny by the Legislative Council. The Legislative Council may repeal or amend the Order during the negative vetting period. The making of the Order is not inconsistent with section 18 of the Business Registration Ordinance (Cap. 310) and does not prejudice the statutory power of the Legislative Council under section 18 of the Ordinance.

Waiver of business registration fee

Our policy intent of the waiver of business registration fees and branch registration fees is that these fees payable in respect of certificates commencing between 1 April 2002 and 31 March 2003, both days inclusive, will be waived for one year at the time of application or renewal. The waiver of fees to be effected by the Order does not therefore apply to fees payable for certificates commencing on or after 1 April 2003. The basis for the waiver under the Order is the commencement date of the registration certificate, not the date of application.

Based on information available in the Inland Revenue Department, no payment has been collected in respect of fresh/renewal applications concerning business/branch registration certificates which commence within the concessionary period (1 April 2002 to 31 March 2003). (If such payment is found subsequently to have been collected by the Government, the payments collected will be refunded.) The Inland Revenue Department plans to issue renewal notices and demand notes in late March to the batch of businesses who would be affected by

the Order the earliest, i.e. businesses whose certificates would expire in the month of April 2002, assuming the Order would become effective on 1 April 2002. The situation that a business having already paid a registration fee eligible to be waived under the Order will not arise and hence there will not be a need to refund such cases.

In addition to the waiver provided for in the Order, we intend to extend the concession on business registration to those businesses whose business registration certificate or branch registration certificate has been issued for a period of 3 years and would not expire during the concessionary period between 1 April 2002 and 31 March 2003, and to businesses whose registration certificates expire between 1 April 2002 and 31 March 2003 but are not renewed because of cessation of business. These businesses will, upon application, be refunded the registration fee already paid on a pro-rata basis by reference to the concessionary period. The refund will be effected through section 39A(b) of the Public Finance Ordinance which provides that the Chief Executive may remit or refund in whole or in part a fee or charge payable to the Government in any particular case and on any special ground.

Notwithstanding the waiver of business/branch registration fee, the levy prescribed in item 3 of Schedule 2 to the Business Registration Ordinance, i.e. the levy dedicated for the use of the Protection of Wages on Insolvency Fund, will continue to be payable.

Reduction of water and sewage charges

While it is true that water and sewage charges for domestic accounts and fresh water supply for flushing are normally billed at four-monthly intervals, there is no restriction under the Waterworks Ordinance on the Water Authority's ability to issue bills for these accounts more frequently. As a matter of fact, if a domestic account or a fresh water flushing account has regularly consumed a high volume of water which falls within the threshold set for monthly billing, the Authority may change the billing schedule for that particular account from a four-monthly to a monthly basis. There is therefore a need to provide for a maximum deductible amount for one-month bills.

Section 5(1)(a) of the Order, which refers to the rate for sewage charge based on the volume of water supplied for non-domestic accounts, will apply to the trade, business or manufacture listed in the Schedule to the Sewage Services (Sewage Charge) Regulation (Cap. 463 sub. leg.) where the amount charged is equal to 70% of the volume of water supplied.

I hope the preceding paragraphs have adequately addressed your enquiries. Should you have any questions on the above, please feel free to contact the undersigned.

Yours sincerely,

(Miss Erica Ng)
for Secretary for the Treasury