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**Paper for the House Committee meeting
on 12 April 2002**

**Report of the Subcommittee on
Revenue (Variation and Reduction of Fees and Charges) Order 2002**

Purpose

This paper reports on the deliberations of the Subcommittee on the Revenue (Variation and Reduction of Fees and Charges) Order 2002 (the Order).

Background

2. As part of the overall special economic relief package in the 2002-03 Budget, the Financial Secretary has proposed the following concessions in certain government fees and charges -

- (a) waiver of business registration fee for one year;
- (b) waiver of water and sewage charges for domestic households for one year, subject to maximum amounts set at \$800 and \$200 respectively;
- (c) waiver of water and sewage charges for non-domestic consumers for one year, subject to maximum amounts set at \$3,200 and \$800 respectively;
- (d) waiver of fresh water flushing charge for one year up to a maximum amount of \$800; and
- (e) reduction of trade effluent surcharge, which is currently payable by 30 designated trades and industries, by a flat rate of 30% for one year.

The Order

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

The Subcommittee

4. At the House Committee meeting on 22 March 2002, members agreed to form a Subcommittee to study the Order. Under the chairmanship of Hon Albert HO Chun-yan, the Subcommittee has held one meeting to discuss with the Administration issues arising from the Order. The membership list of the Subcommittee is at **Appendix**.

Deliberations of the Subcommittee

Policy objective and financial implications

5. Members of the Subcommittee are in support of the policy objective of the Order, which is to provide immediate economic relief for the community through the proposed concessions. Members note that the proposed concessions would result in a total estimated loss of revenue of \$2.6 billion to the Government but would benefit the community to the following extent -

- (a) about 600 000 businesses will benefit from the waiver of business registration fee;
- (b) 77% of domestic water accounts (about 2.1 million households) and 81% of the domestic sewage accounts (about 1.9 million households) will pay no water or sewage charges for one year;
- (c) 83% of the non-domestic accounts (about 180 000) will pay no water or sewage charges for one year;
- (d) 80% of the fresh water flushing accounts (about 16 800) will be exempted from payment of water charges for flushing for one year; and
- (e) for the current 15 000 trade effluent surcharge accounts, the average reduction in the surcharge per account will be around \$4,000.

The legal implication of using section 39A of the Public Finance Ordinance to effect the waiver and reduction of fees and charges

6. The Subcommittee notes that the proposed waiver and reduction of fees and charges were made by way of an Order made by the CE under section 39A(a) of the Public Finance Ordinance. It also notes that there are already specific provisions in the respective Ordinances for the variation of the fees and charges in question. The Subcommittee is therefore concerned about the propriety of using section 39A(a) of PFO to effect the proposed waiver and reduction of fees and charges.

7. The Subcommittee notes that, in particular, section 18(1) of the Business Registration Ordinance (BRO) (Cap. 310) provides that the Legislative Council may by resolution amend Schedule 1 to the Ordinance, which specifies the fees payable on registration of business or issue of further business registration certificates. The Subcommittee is concerned whether the making of the Order subject to negative vetting of the Legislative Council would effectively remove the powers of the Council provided under section 18(1) of BRO, i.e. powers to scrutinize subsidiary legislation under the positive vetting procedure as stipulated under section 35 of the Interpretation and General Clauses Ordinance (Cap. 1).

8. In this respect, the Administration has explained that the provision in section 39A of PFO first appeared 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 then Governor to reduce fees and charges. The clause was subsequently transferred to the PFO by virtue of the Interpretation and General Clauses (Amendment) (No. 2) Ordinance 1993 for the reason that PFO was considered the more appropriate ordinance for that provision. According to the Administration, there has not been any order made under the former section 96 of Cap. 1 or section 39A(a) of PFO in the past.

9. As regards the use of section 39A(a) of PFO in the present case, the Administration explains that the proposed waiver and reduction of fees and charges are intended to be a one-off package providing for a time-limited relief to the community in the light of the current economic downturn. The Administration considers it appropriate to engage the general power of the CE to make the Order under section 39A(a) of PFO to achieve the purpose, so that the public will have a clearer and overall picture of the proposed relief measures. There is no inconsistency with section 18(1) of BRO as the Order made by CE under section 39A(a) of PFO has been published as subsidiary legislation and that the Legislative Council may repeal or amend the Order during the vetting period. In other words, the making of the Order does not prejudice the statutory power of the Legislative Council under the provision.

10. The Subcommittee also notes the view of some members that the exercise of the power by CE under section 39A(a) of PFO is acceptable on this occasion as the executive power provided under section 39A(a) of PFO is narrower than that provided under the ordinances in respect of the fees and charges in question. Under section 39A(a) of PFO, the adjustment in fees and charges must not amount to any increase in such fee or charge whereas in the respective ordinances, adjustment can be made both upwards and downwards.

11. Members of the Subcommittee however are concerned about the broader issue of the exercise of section 39A(a) of PFO in view of the following

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- (a) The scope of power conferred on CE under the provision is very wide in that the provision is applicable to any fee or charge payable to the Government or any public body or public officer. It is important that such a wide scope of power is subject to adequate checks and balances.
- (b) On this occasion, the provisions of the Order do not appear to contravene the existing statutory provisions in respect of the fees and charges in question. However, there is the possibility that future variation in fees and charges effected through an order made under section 39A(a) of PFO may contravene the existing statutory provisions in respect of such fees and charges.

12. The Administration acknowledges that the power under section 39A(a) of PFO is wide in coverage, but stresses that in any case, the power is subject to the proviso that no variation made under the provision shall cause such fee or charge to exceed the original figure. That means the variation to be made must not amount to an increase in the fees or charges concerned. Moreover, an order made under the provision is subsidiary legislation so that any proposed variation of fees and charges under such an order will be subject to the scrutiny of the Legislative Council. The Administration therefore considers that there are adequate checks and balances in respect of the power conferred on CE under section 39A(a) of PFO.

13. As regards members' concern on whether the exercise of power by CE under section 39A(a) of PFO would contravene other statutory provisions for the relevant charging regimes, the Administration has undertaken to specifically review this aspect in any future proposal involving the use of section 39A(a) of PFO.

The use of section 39A(b) of PFO to effect refund of business registration fee

14. The Subcommittee notes that in addition to the waiver of business registration fee provided for in the Order, for equity purposes, the Administration also intends to extend the concession on business registration to the following two types of businesses -

- (a) businesses whose business registration certificate or branch registration certificate has been issued for a period of three years and would not expire during the concessionary period between 1 April 2002 and 31 March 2003; and
- (b) businesses whose registration certificates expire between 1 April 2002 and 31 March 2003 which cease to carry on business during the concessionary period.

15. These businesses will, upon application, be refunded the registration fee already paid on a pro-rata basis by reference to the concessionary period. The deadline for application for refund will be 30 September 2003 and this deadline will be specified in the notices to be issued by the Administration to those who are eligible for the refund.

16. The Administration has advised that the above refund arrangements do not fall under the scope of section 39A(a) of PFO and therefore have not been incorporated into the Order. Instead, the refund arrangements will be made under section 39A(b) of PFO, which provides that CE 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. The Administration considers that the equity grounds based on which the refund arrangements are to be made fall within the circumstances provided for under section 39A(b) of PFO.

Reduction of water and sewage charges

17. Section 46 of the Waterworks Regulation (Cap. 102 sub. leg.) provides that the Water Authority shall charge the rates specified in Part III of Schedule I of fresh water supplied under the Ordinance. Items 1(b) and 1(c) in Part III of Schedule 1 specify the charge for fresh water supply for domestic purposes and for flushing purposes per 4-month period. On the other hand, sections 4(3)(a) and 5(3)(a) of the Order provides the maximum amount allowed to be deducted in respect of a bill for a 1-month period for fresh water supply for domestic purposes and for flushing purposes. In this respect, the Subcommittee examined how far sections 4(3)(a) and 5(3)(a) of the Order would in effect vary the method of billing specified under the Waterworks Regulation.

18. The Administration explains that there is no restriction under the Waterworks Ordinance on the Water Authority's ability to issue bills for fresh water for domestic purposes and for flushing purposes more frequently than 4-monthly intervals as the circumstances may require. The rates specified in Part III of Schedule 1 only provide the basis for calculation. Section 2 of the same Schedule, which defines the four month period as 121.64 days, provides a clear reference point for working out the charges on a pro-rata basis for billing periods of less than 4 months.

19. The Subcommittee also takes note of the administrative arrangements undertaken by the Administration to effect the waiver for water and sewage charges for domestic accounts and non-domestic accounts as provided in sections 4 and 5 of the Order. The Administration will issue a leaflet to account holders shortly to explain how the concessions are to be effected.

Commencement date of the Order

20. Section 1 of the Order provides that the Order shall come into operation on 1 April 2002, before the scrutiny period of the Order expires on 10 April 2002 or 17 April 2002 upon extension by resolution. Members are aware that the repeal or amendment of the Order would not prejudice anything done thereunder. Should the Order be repealed or amended during the scrutiny period, members of the public would not be liable to pay the amount of fees or charges waived or reduced for the period between the commencement of the Order and its repeal or amendment. Notwithstanding this, the Subcommittee has questioned the propriety of arranging the Order to commence before expiry of the scrutiny period.

21. The Administration explains that it is fully aware of the possibility that the Order may be repealed or amended by Members during the scrutiny period. However, having regard to the fact that the Order is concerned with a one-off package of concessions in government fees and charges for one year, the Administration considers it appropriate to arrange the Order to commence operation on 1 April 2002 to tie in with the commencement of the 2002-03 fiscal year. Should the Order be repealed or amended during the scrutiny period, the Administration would consider the appropriate course of action taking into account the cost and feasibility of recovering the charges due to the Government under the then circumstances.

22. The Subcommittee is of the view that while on this occasion, repeal or amendment to the Order during the scrutiny period would not give rise to significant policy or administrative problems, the Administration should in future avoid arranging the operation of similar subsidiary legislation to commence at a date earlier than the completion of the relevant scrutiny period, as this arrangement would somehow create a *fait accompli* situation, and thus may prejudice the Legislative Council's power to amend or repeal the

subsidiary legislation concerned.

Resource implications of the administration of the proposed concessions

23. Regarding the administration of the proposed measures in the relief package, the Administration has advised that all the additional administrative work will be absorbed within existing staffing resources. Calculations of the amount of reduction or refund for individual accounts only involve relatively straight forward computer work. Moreover, some staff savings as a result of the reduction in the number of accounts required to pay the water and sewage charges can be suitably re-deployed for the administrative work associated with the concessions. The billing work in respect of water and sewage charges can also be staggered as most accounts are billed at four-month intervals and there is no requirement to issue all bills at the same date.

Recommendation

24. The Subcommittee recommends support of the Order.

Extension of the scrutiny period

25. As agreed at the House Committee meeting on 22 March 2002, the Chairman of the House Committee would move a motion at the Council meeting on 10 April 2002 to extend the scrutiny period of the Order to the Council meeting on 17 April 2002.

Advice sought

26. Members are invited to note the deliberations and recommendation of the Subcommittee.

Prepared by
Council Business Division 1
Legislative Council Secretariat
10 April 2002

**Subcommittee on
Revenue (Variation and Reduction of Fees and Charges) Order 2002**

Membership list

Chairman Hon Albert HO Chun-yan

Members Hon David CHU Yu-lin, JP
Hon Margaret NG
Hon CHAN Yuen-han, JP
Hon Andrew WONG Wang-fat, JP

(Total : 5 Members)

Clerk Ms Anita SIT

Legal Adviser Ms Bernice WONG

Date 28 March 2002