

立法會 *Legislative Council*

LC Paper No. LS57/07-08

**Paper for the House Committee Meeting
on 7 March 2008**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 27 February 2008**

Date of tabling in LegCo : 5 March 2008

Amendment to be made by : 12 March 2008 (or 23 April 2008 if extended by resolution)

PART I PUBLIC REVENUE PROTECTION ORDER

**Public Revenue Protection Ordinance (Cap. 120)
Public Revenue Protection Order 2008 (L.N. 33)**

The Public Revenue Protection Order 2008 (the Order) is a temporary measure taken under the Public Revenue Protection Ordinance (Cap. 120) (the Ordinance) to give effect to the proposal in paragraph 115 of the 2008-09 Budget to lower the rates of duty on two types of liquors, i.e. —

- (a) lower the rate of duty on liquor (other than wine) with an alcoholic strength of not more than 30% by volume measured at a temperature of 20°C from 20% of its value to 0%; and
- (b) lower the rate of duty on wine from 40% of its value to 0%.

2. Under section 2 of the Ordinance, if the Chief Executive approves of the introduction into the Legislative Council of a bill whereby, if the bill were to become law any duty, tax, etc. would be imposed, removed or altered, the Chief Executive may make an order giving full force and effect of law to all the provisions of the bill. Under section 5 of the Ordinance, an order so made shall come into force immediately upon signing by the Chief Executive, and shall expire and cease to be in force —

- (a) upon the notification in the Gazette of the rejection by the Legislative Council of the bill in respect of which the order was made; or
- (b) upon the notification in the Gazette of the withdrawal of the bill; or
- (c) upon the bill, with or without modification, becoming law in the ordinary manner; or
- (d) upon the expiration of four months from the day on which the order came into force,

whichever event first happens.

3. Under section 7 of the Ordinance, if this Order ceases to be in force and is not replaced, with or without modification, by the bill or resolution in respect of which it was made, the former rate of duty will thereupon be restored.

4. Section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) provides that Members may amend subsidiary legislation in any manner whatsoever consistent with the power to make such subsidiary legislation. The power of the Chief Executive in Council under section 2 of the Ordinance is to make an order giving full force and effect of law to all the provisions of the bill. Consistent with this power, Members have the power to repeal the Order but do not have power to amend the provisions therein.

5. The Order came into force at 11 a.m. on 27 February 2008.

PART II MISCELLANEOUS ITEMS

Rating Ordinance (Cap. 116)

Rating (Exemption) Order 2008 (L.N. 34)

6. To give effect to the proposal in paragraph 174 of the 2008-09 Budget, this Order declares that all tenements are exempted from the payment of rates in respect of any quarter in the period 1 April 2008 to 31 March 2009 wholly, if the amount of rates payable for the quarter is \$5,000 or less, or up to \$5,000, if the amount is more than \$5,000.

7. The Order will come into operation on 1 April 2008.

**Public Finance Ordinance (Cap. 2)
Revenue (Reduction of Business Registration Fees) Order 2008 (L.N. 35)**

8. To give effect to the proposal in paragraph 172 of the 2008-09 Budget, this Order waives the fees payable in respect of business registration certificates and branch registration certificates, under the Business Registration Ordinance (Cap. 310), which commence on or after 1 April 2008 but before 1 April 2009.

9. Section 39A(a) of the Public Finance Ordinance (Cap. 2) (PFO) provides, among other things, that any fee made payable by or under any Ordinance to the Government, 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 to exceed the original figure.

10. This is to say that new businesses with date of commencement of business falling in the year 2008-09 will be relieved from paying business registration fee of \$2,000 for the first year and existing businesses will not be required to pay a registration fee of \$2,000 when they renew their registration in the year 2008-09.

11. The registration fee of \$73 for branch registrations will also be waived in a similar manner.

12. If businesses have elected for three-year certificates, the business and branch registration fees for their new certificates or renewal certificates that have a commencement date within the year 2008-09 will be reduced by \$2,000 and \$73 to \$3,200 and \$116 respectively.

13. In order that this waiver concession can also benefit businesses which have already paid the 2008-09 business registration fees or branch registration fees, but do not renew their registration certificates in year 2008-09, concessionary refund of the relevant amount of business registration fees paid for year 2008-09 will be allowed to them, upon their applications.¹ This concessionary refund arrangement is effected under section 39A(b) of PFO which provides, among other things, that any fee made payable by or under any Ordinance to the Government, not being a fee or charge which is regulated by rules of court may be remitted or refunded, in whole or in part, in any particular case and on any special ground by the Chief Executive.

14. Members are aware that in the 2002-03 Budget, the Financial Secretary also proposed to waive business registration fee for one year. The waiver was also effected by way of an Order made by the Chief Executive under section 39A(a) of PFO and the concessionary refund arrangement was effected under section 39A(b) of PFO. A Subcommittee was formed to study the Revenue (Variation and Reduction

¹ This piece of information is announced in the Inland Revenue Department's web site at www.ird.gov.hk/eng/tax/budget.htm#br.

of Fees and Charges) Order 2002 (L.N. 35 of 2002)². The Subcommittee was concerned about the propriety and legal implications on giving effect to fee waiver and reduction by way of an Order under section 39A(a) of PFO, and had sought clarification from the Administration at the meeting. The Subcommittee found the arrangement acceptable and recommended support of the Order.³

15. The Order will come into operation on 1 April 2008.

16. There is no problem identified in relation to the legal or drafting aspects of the above items of subsidiary legislation.

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² Apart from the waiver of business registration certificates fees, the 2002 Order also, by virtue of section 39A(a) of PFO, reduces fresh water charges and sewage charges for domestic purposes and non-domestic purposes subject to a ceiling.

³ Subcommittee's Report circulated to Members vide LC Paper No. CB(1) 1455/01-02 and House Committee's minutes of meeting held on 12 April 2002 circulated to members vide LC Paper No. CB(2) 1596/01-02.