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Legislative Council

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**Paper for the House Committee Meeting
on 5 March 2010**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 26 February 2010**

Date of tabling in LegCo : 3 March 2010

Amendment to be made by : 17 March 2010 (or 21 April 2010 if extended by resolution)

**PART I SUBSIDIARY LEGISLATION RELATING TO THE 2010-2011
BUDGET SPEECH**

Public Revenue Protection Ordinance (Cap. 120)
Public Revenue Protection Order 2010 (L.N. 18)

The Public Revenue Protection Order 2010 (the Order) was made by the Chief Executive under section 2 of the Public Revenue Protection Ordinance (Cap. 120) (PRPO) after consultation with the Executive Council. Section 2 of PRPO provides, among other things, that if the Chief Executive approves of the introduction into LegCo of a bill whereby, if the bill were to become law any duty, tax, fee, rate, 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. The Order is made to give full force and effect to all the provisions of the bill contained in the Schedule to the Order.

2. The bill contained in the Schedule to the Order proposes to amend the Stamp Duty Ordinance (Cap. 117) (SDO) to give effect to two proposals as set out in paragraph 29 of the 2010-2011 Budget Speech delivered by the Financial Secretary on 24 February 2010. Clause 3 of the bill amends section 29C(12) of SDO so that section 29C(11) of SDO, which provides for the deferred payment of stamp duty chargeable on an agreement for sale made in respect of residential property, does not apply to an agreement for sale the consideration for which exceeds \$20,000,000. Clause 4 of the bill amends the First Schedule to SDO to increase the stamp duty payable in respect of a conveyance on sale or an agreement for sale of immovable

property, if the instrument involves a consideration exceeding \$20,000,000, from 3.75 per cent to-

- (a) \$750,000 plus 10% of the amount by which the amount or value of the consideration exceeds \$20,000,000, where the amount or value of the consideration exceeds \$20,000,000 but does not exceed \$21,739,120 and the instrument is certified in accordance with section 29 of SDO at \$21,739,120¹; or
- (b) 4.25 per cent in any other case.

The bill will be introduced into LegCo in accordance with the normal legislative procedures.

3. The Order is a temporary measure. Under section 5 of PRPO, the Order shall come into force immediately upon signing by the Chief Executive, unless some other time be specified in the Order for the coming into force of the Order, and it shall expire and cease to be in force –

- (a) upon the notification in the Gazette of the rejection by LegCo 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 the Order; or
- (c) upon the bill, with or without modification, becoming law in the ordinary manner; or
- (d) upon the expiration of 4 months from the day on which the Order came into force,

whichever event first happens.

4. Under section 6 of PRPO, any duty paid under the Order in excess of the respective duty payable immediately after the expiry of the Order shall be repaid to the person who paid the same.

5. The Order will come into operation on 1 April 2010.

¹ Section 29 of SDO provides that a certified conveyance on sale at a particular amount means that such conveyance on sale contains a statement certifying that the transaction effected by the instrument does not form part of a larger transaction or series of transactions in respect of which the amount or value, or aggregate amount or value, of the consideration exceeds that amount.

6. 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.

Rating Ordinance (Cap. 116)
Rating (Exemption) Order 2010 (L.N. 19)

7. The Rating (Exemption) Order 2010 (the Exemption Order) was made by the Chief Executive in Council under section 36(2) of the Rating Ordinance (Cap. 116) to give effect to the rates concession proposed in paragraph 153(4) of the 2010-2011 Budget Speech. The Exemption Order declares that all tenements are exempted from the payment of rates in respect of any quarter in the period from 1 April 2010 to 31 March 2011 wholly, if the amount of rates payable for the quarter is \$1,500 or less, or up to \$1,500 if the amount is more than \$1,500.

8. The Exemption Order will come into operation on 1 April 2010.

Public Finance Ordinance (Cap. 2)
Revenue (Reduction of Business Registration Fees) Order 2010 (L.N. 20)

9. The Revenue (Reduction of Business Registration Fees) Order 2010 (the 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 the proposal to waive the business registration fees as set out in paragraph 153(5) of the 2010-2011 Budget Speech.² The Order reduces the fees payable under the Business Registration Ordinance (Cap. 310) in respect of business registration certificates and branch registration certificates that commence on or after 1 August 2010 but before 1 August 2011. In relation to a one-year business registration certificate, the fee is reduced by a sum of \$2,000 to nil; whereas in relation to a three-year business registration certificate, the fee is reduced by a sum of \$2,000 to \$3,200. In relation to a one-year branch registration certificate, the fee is reduced by a sum of \$73 to nil; whereas in relation to a three-year branch registration certificate, the fee is reduced by a sum of \$73 to \$116.

² Section 39A(a) of the Public Finance Ordinance provides, among other things, that any fee made payable by or under any Ordinance to the Government, not being a fee 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. The Order will come into operation on 1 August 2010.

PART II REVISION OF FEES AND CHARGES

Dutiable Commodities Ordinance (Cap. 109)

Dutiable Commodities (Amendment) Regulation 2010 (L.N. 21)

11. Section 29A of the Interpretation and General Clauses Ordinance (Cap. 1) (IGCO) empowers the Financial Secretary (which means also the Secretary for Financial Services and the Treasury (SFST) by virtue of section 3 of IGCO) to vary fees which have previously been fixed by subsidiary legislation. In exercise of this power, SFST has made the Dutiable Commodities (Amendment) Regulation 2010 (the Amendment Regulation) to revise 25 items of fees and charges specified in the Schedule to the Dutiable Commodities Regulations (Cap. 109 sub. leg. A).

12. Members may refer to the LegCo Brief (no file reference provided) of February 2010 issued by the Financial Services and the Treasury Bureau (Treasury Branch) for background information.

13. The Amendment Regulation increases various annual licence fees payable under the Dutiable Commodities Ordinance (Cap. 109), including the fees for bonded warehouse or public bonded warehouse licences, warehouse licences in respect of liquor, tobacco, hydrocarbon oil and methyl alcohol, import and export licences for the above dutiable commodities, liquor licences and manufacturer's licences for tobacco. It also increases the fees for the transfer of licences and the fees and charges for various certificates and permits for storage of dutiable commodities. The rate of increase ranges from 10% to 20%. Details of the proposed revision of fees are contained in Annex I to the LegCo Brief. These fees and charges were last revised in December 2000³ and May 2006⁴.

14. According to paragraphs 3 to 6 of the LegCo Brief, the proposed revision of fees is in line with the Government's policy that fees and charges for public services should in general be set at levels sufficient to recover the full cost of providing the services. Costing review at the 2009-10 price level shows that the cost recovery level of these items ranges from 19% to 91%. The Administration proposes to revise these fees and charges gradually to the full-cost recovery level in accordance with the general fee revision guidelines.⁵

³ L.N. 324 of 2000.

⁴ L.N. 2 of 2006.

⁵ According to the revision guidelines, a fee should be increased by 20%, 15% and 10% if its cost recovery rate is less than 40%, 40 to 70%, or more than 70% respectively.

15. The Administration consulted the LegCo Panel on Financial Affairs on 4 January 2010 regarding the proposed revision of fees and charges. A Panel member expressed concern that the proposed revision might lead to increases in the prices of the services and products of the relevant trades. Given the small amount of extra revenue involved (\$0.5 million a year), the member asked the Administration to consider withholding the proposed revision.

16. The Amendment Regulation will come into operation on 27 April 2010.

PART III DESIGNATION OF LIBRARIES

Public Health and Municipal Services Ordinance (Cap. 132)

Designation of Libraries Order 2010 (L.N. 22)

17. This Order designates the Students' Study Room on the first floor of Tung Chung Municipal Services Building, 39 Man Tung Road, Tung Chung as a library. The effect of this is that the management and control of that library is vested in the Director of Leisure and Cultural Services and the Director may exercise other statutory functions under the Public Health and Municipal Services Ordinance (Cap. 132) in respect of that library.

18. This Order came into operation on 1 March 2010.

19. There are no difficulties identified in relation to the legal and drafting aspects of the above items of subsidiary legislation.

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