

立法會
Legislative Council

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**Paper for the Subcommittee on
Public Revenue Protection
(Motor Vehicles First Registration Tax) Order 2011**

Legislative Council's power to amend the Order

At the meeting of the Subcommittee on Public Revenue Protection (Motor Vehicles First Registration Tax) Order 2011 on 24 March 2011, the Legal Service Division (LSD) was asked to provide a paper on the extent of the Legislative Council's power to amend the Order. This paper sets out the views of LSD.

2. The Public Revenue Protection (Motor Vehicles First Registration Tax) Order 2011 (the Order) was made by the Chief Executive under section 2 of the Public Revenue Protection Ordinance (Cap. 120) (the Ordinance) after consultation with the Executive Council to give immediate effect to the proposal in paragraph 166 of the 2011-12 Budget Speech delivered by the Financial Secretary on 23 February 2011, namely to increase the first registration tax for private cars by about 15%.

3. Section 2 of the Ordinance provides that:

"If the Chief Executive approves of the introduction into the Legislative Council of a bill or resolution whereby, if such bill or resolution were to become law-

- (a) any duty, tax, fee, rate or other item of revenue would be imposed, removed or altered; or
- (b) any allowance in respect of a duty, tax, fee, rate or other item of revenue would be granted, altered, or removed; or
- (c) any administrative or general provision in relation to a duty, tax, fee, rate or other item of revenue would be enacted, altered, or removed,

the Chief Executive may make an order giving full force and effect of law to all the provisions of the bill or resolution so long as such order remains in force."

4. The Order is a temporary measure to give full force and effect to all the provisions of the bill contained in the Schedule to the Order. Under section 5(1) of the Ordinance, an order made under the Ordinance shall come into force immediately upon signing by the Chief Executive or at a time specified in the order. Under section 5(2) of the Ordinance, the Order 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 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.

5. Under section 6 of the Ordinance, any tax paid under the Order in excess of the tax payable immediately after the expiration of the Order shall be repaid to the person who paid the same (i.e. the vehicle buyers).

6. The Order is an item of subsidiary legislation which is subject to section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) which provides that the Legislative Council may amend an item of subsidiary legislation in any manner whatsoever consistent with the power to make such subsidiary legislation. In a normal case where the Legislative Council is seeking to amend an item of subsidiary legislation under section 34(2) of Cap. 1, as long as the proposed amendment conforms with requirements of the Rules of Procedure, the Legislative Council would be able to amend by way of repeal, addition or variation of the subsidiary legislation in question. However, because of the requirement in section 34(2) of Cap. 1, the true extent of the Legislative Council's power to amend the Order has to be examined in the context of the Ordinance.

7. Under section 2 of the Ordinance, if the Chief Executive has approved of the introduction into the Legislative Council of a bill which would provide the legal basis for achieving any of the revenue measures provided in section 2(a) to (c) of the Ordinance, he will have a discretion to decide whether to make an order to give "full force and effect of law to all the provisions of the bill". In other words, if the Chief Executive decides to make an order, he will have no choice but to include in the order all the provisions of the bill of which he has approved. Since the Legislative Council's power to amend the Order has to be exercised in a manner consistent with the power of the Chief Executive to make that Order, its power is, pursuant to section 34(2) of Cap. 1, limited to repealing the Order in its entirety.

8. Members may wish to note that in relation to Public Revenue Protection (Revenue) Order 1999 there was a President's ruling on a Member's proposed amendment to it. That proposed amendment sought to repeal certain provisions in the bill scheduled to that order. The bill was introduced to the Legislative Council on 21 April 1999. It was ruled by the then President in a ruling dated 3 May 1999 that to be consistent with the power of the Chief Executive to make the order, the Legislative Council's power to amend the order under section 34(2) of Cap. 1 is limited to repealing the order (paragraph 16).

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