

立法會
Legislative Council

LC Paper No. CB(1)851/18-19

Ref.: CB1/SS/10/18

Paper for the House Committee

**Report of the Subcommittee on Revenue (Reduction of Business
Registration Fees and Branch Registration Fees) Order 2019**

Purpose

This paper reports on the deliberations of the Subcommittee on Revenue (Reduction of Business Registration Fees and Branch Registration Fees) Order 2019 ("the Subcommittee").

Background

2. In the 2019-2020 Budget, the Financial Secretary has proposed waiver of business registration fees for reducing the operating cost of business amidst the uncertain economic circumstances ahead.

3. The Business Registration Ordinance (Cap. 310) ("BRO") provides that any person carrying on sole proprietorship or partnership business shall apply for business registration. A company incorporated/registered under the Companies Ordinance (Cap. 622) ("CO") is also required to apply for business registration. There are two types of business registration certificate: one-year certificate at a fee of \$2,000 and three-year certificate at a fee of \$5,200. For branches of the registered businesses, the fee for a one-year certificate is \$73 while that for a three-year certificate is \$189.

**Revenue (Reduction of Business Registration Fees and Branch
Registration Fees) Order 2019 (L.N. 29 of 2019)**

4. The Revenue (Reduction of Business Registration Fees and Branch Registration Fees) Order 2019 (L.N. 29 of 2019) ("the Order") is made by the Chief Executive under section 39A(a) of the Public Finance Ordinance (Cap. 2) ("PFO") after consultation with the Executive Council

to give effect to the waiver of the business registration fees proposed in paragraph 109(a) of the 2019-2020 Budget Speech.

5. The Order reduces the fees payable under BRO in respect of a business registration certificate or branch registration certificate that is endorsed with a date of commencement that falls within the period of 12 months beginning on 1 April 2019 ("concession period").

6. In relation to a one-year business registration certificate and branch registration certificate, the fee is reduced by a sum of \$2,000 and \$73 respectively to nil during the concession period. In relation to a three-year business registration certificate (i.e. where an election is made under section 6(5C) of BRO for the expiry date to be endorsed on the applicable business registration certificates to be the date of expiration of 3 years from the date of commencement endorsed thereon), the fee is reduced by a sum of \$2,000 to \$3,200 and a three-year branch registration fee is reduced by a sum of \$73 to \$116 during the concession period.

7. Where business registration fee is payable under section 5A(1)(a) of BRO in relation to an incorporation submission made for the purpose of forming a company under section 67 of CO or incorporating an open-ended fund company under section 112C of the Securities and Futures Ordinance (Cap. 571), the reduction also applies if the submission is made within the concession period.

8. The Order was gazetted on 8 March 2019 and tabled at the Legislative Council meeting of 20 March 2019 for negative vetting. Under section 1 of the Order, the Order comes into operation on 1 April 2019.

The Subcommittee

9. At the meeting of the House Committee on 15 March 2019, Members agreed to form a subcommittee to study the Order. Hon Steven HO Chun-yin was elected as Chairman of the Subcommittee. The Subcommittee has held one meeting to scrutinize the Order. The membership list of the Subcommittee is in the **Appendix**.

Deliberations of the Subcommittee

10. The Subcommittee raises no objection to the Order. In the course of scrutiny, members have expressed views on concessionary waiver of fees levied on business by the Government, and examined the legal basis and operational details of the proposed mechanism for refunding business registration fees paid. The Subcommittee's deliberations are set out in the ensuing paragraphs.

Target beneficiaries of waiver of fees

11. Members note that while as many as 1.4 million business operators in Hong Kong will benefit from the proposed waiver of business registration fees, hawkers and fishermen will not benefit from the proposed waiver. Under the Business Registration Regulations (Cap. 310A), business carried on by such hawkers as require licences for the carrying on of such businesses under the Hawker Regulation (Cap. 132AI), other than businesses carried on inside the main structure of any building, shall be exempt from the provisions of BRO. Such hawkers are required to pay hawker licence fees instead of business registration fees. The provisions of BRO shall not apply to the business of fishing in accordance with section 16(1)(c) of BRO. For fishermen, they are not required to pay business registration fees pursuant to section 16(1)(c) of BRO, but have to pay licence fees for Class III vessels (fishing boats) as required under the relevant subsidiary legislation of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) and for engaging in fish culture under the relevant subsidiary legislation of the Marine Fish Culture Ordinance (Cap. 353). Given that hawkers and fishermen are currently required to pay licence fees to the Government in order to continue running their business, and such an arrangement is similar in nature to business registration fee payment, these members opine that the Administration should have also waived the hawker licence fee, fishing boat licence fee and marine fish culture licence fee. They have called on the Administration to be more cautious and thorough in deciding the target beneficiaries to be covered when formulating and implementing a concessionary measure so that it will not result in certain sectors of a society being left out.

12. The Administration has advised that the waiver proposal has been made after in-depth discussions within the Government. Taking note of the above views of members, the Administration has undertaken to relay the views to relevant bureaux/departments for reference.

Refund mechanism

13. The Subcommittee notes that as stated in paragraph 5 of the Administration's paper on the Order (LC Paper No. CB(1)761/18-19(01)) provided to the Subcommittee, the Administration proposes to refund businesses which are not yet required to renew their registration certificates within 2019-2020 but have nonetheless made payment in respect of business registration certificates or branch registration certificates with validity falling within 2019-2020. Further, the Administration proposes to make pro-rata refund to businesses which will not renew their registration certificates within 2019-2020 due to cessation of business but have nonetheless made payment in respect of business registration certificates or branch registration certificates covering 2019-2020 in full or in part.

14. As the above refund arrangements are not specified in the Order, the Subcommittee Chairman has requested the Administration to provide further information on the legal basis for and operational details of the mechanism for refund of business registration fees paid.

15. The Administration has advised that the Order, which is made pursuant to section 39A(a) of PFO serves to reduce the fees payable for business registration certificates and branch registration certificates with a commencement date (including commencement date for renewal) falling between 1 April 2019 and 31 March 2020 (both dates inclusive) by an amount of \$2,000 and \$73 respectively. Section 39A(a) of PFO provides that the Chief Executive may by order reduce or vary any fee or charge made payable to Government by or under any Ordinance.

16. In other words, the Order does not cover businesses which are not yet required to renew their registration certificates within 2019-2020 but have nonetheless made payment in respect of business registration certificates or branch registration certificates with validity falling within 2019-2020 (i.e. some of those businesses with three-year registration certificates). Neither does the Order cover businesses which will not renew their registration certificates within 2019-2020 due to cessation of business but have nonetheless made payment in respect of registration certificates covering 2019-2020.

17. Since the validity period of the certificates mentioned in paragraph 16 above also falls within the concession period under the relevant Budget measure, the Administration proposes to make refund to those businesses on a pro-rata basis where appropriate. The refund, which is not covered by the Order, is separately effected by way of approval from the Chief Executive pursuant to section 39A(b) of PFO,

which provides that 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 remitted or refunded, in whole or in part, in any particular case and on any special ground by the Chief Executive. Unlike section 39A(a) which specifies that the Chief Executive may "by order" (i.e. by subsidiary legislation) reduce or vary any fee or charge, the words "by order" are NOT expressed in section 39A(b) and therefore the making of legislation is not intended under section 39A(b) for granting remission or refund. The remission or refund under section 39A(b) will be administratively exercised under the discretionary power of the Chief Executive on case-by-case basis and no legislation is involved. The refund will be made by the Inland Revenue Department starting from late July 2019.

Recommendation

18. The Subcommittee has completed scrutiny of the Order. The Subcommittee and the Administration will not propose amendments to the Order. The Subcommittee Chairman made a verbal report on the deliberations of the Subcommittee at the House Committee meeting on 29 March 2019.

Advice sought

19. Members are invited to note the deliberations of the Subcommittee as set out above.

Council Business Division 1
Legislative Council Secretariat
10 April 2019

**Subcommittee on Revenue (Reduction of Business Registration Fees
and Branch Registration Fees) Order 2019**

Membership list

Chairman Hon Steven HO Chun-yin, BBS

Members Hon Wilson OR Chong-shing, MH

Hon Vincent CHENG Wing-shun, MH

(Total : 3 members)

Clerk Mr Derek LO

Legal Adviser Ms Wendy KAN