

立法會
Legislative Council

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LC Paper No. CB(1)360/99-00
(These minutes have been
seen by the Administration)

Bills Committee on Revenue Bill 1999

**Minutes of meeting held on
Monday, 26 April 1999, at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Margaret NG (Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon Christine LOH
Hon CHAN Kam-lam
Hon SIN Chung-kai
Hon Andrew WONG Wang-fat, JP
Hon Mrs Miriam LAU Kin-ye, JP
Hon Andrew CHENG Kar-foo

Members absent : Hon Eric LI Ka-cheung, JP
Hon Ronald ARCULLI, JP
Hon CHAN Yuen-han

Public officers attending : Miss Denise YUE
Secretary for the Treasury

Mr Benedict LAI
Law Officer (Civil Law) (Acting)
Department of Justice

Mr Martin GLASS
Deputy Secretary for the Treasury

Miss Amy TSE
Principal Assistant Secretary for the Treasury

Dr Ernest S W LEE

Assistant Commissioner for Transport

Mr Y Y CHU
Assistant Commissioner of Inland Revenue (Acting)

Mr Thomas LI
Senior Assessor
Inland Revenue Department

Ms Sherman CHAN
Senior Assistant Law Draftsman
Department of Justice

Clerk in attendance : Miss Odelia LEUNG, Chief Assistant Secretary (1)1

Staff in attendance : Ms Bernice WONG, Assistant Legal Adviser 1
Mrs Mary TANG, Senior Assistant Secretary (1)2

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I Meeting with the Administration
(LC Paper Nos. CB(1)1196/98-99(01) and (02))

Confirmation of Chairmanship

Miss Margaret NG referred members to the affirmation of the House Committee at its meeting on 23 April 1999 that members of the Subcommittee on Public Revenue Protection (Revenue) Order 1999 (the Subcommittee) should become members of the Bills Committee on Revenue Bill 1999 (the Bills Committee). She sought members' view about the chairmanship of the Bills Committee. Mrs Selina CHOW suggested and members agreed that Miss Margaret NG, being the Chairman of the Subcommittee, should be the Chairman of the Bills Committee.

Public consultation

2. The Chairman enquired if members considered it necessary to invite public views on the Revenue Bill 1999 (the Bill) since the Administration had not conducted any public consultation. Mrs Selina CHOW said that she would prefer to decide on the need for consultation at a later stage, depending on the progress of discussion. Mr Albert HO said that he was aware that some trade associations had approached certain members expressing views on the Bill. He suggested that the Bills Committee receive deputations. He said that he

could provide members with a list of the transport trade organisations which had indicated objection against the increase in parking meter charges and tunnel tolls. He also suggested issuing a press release to invite public view on the Bill.

3. Mr CHAN Kam-lam said that he did not consider it necessary to conduct public consultation because the provisions of the Bill were not technical in nature. He said that since the Financial Secretary announced the 1999-2000 Budget in March 1999, there had been ample debate on the revenue proposals. He was concerned that the conduct of public consultation would delay the scrutiny of the Bill and affect members' opinion.

4. Miss Christine LOH said that she intended to move an amendment to increase the fixed penalty for smoky vehicles from \$450 to \$5000, as against the Government's proposed increase to \$570. She could expect divergent views on her proposal. She considered it necessary to consult the public, in particular on the controversial revenue proposals. Mr CHENG Kar-foo echoed this view and supported the issue of a press release or an advertisement inviting public comments on the Bill.

5. Mrs Selina CHOW did not support selectively inviting views from certain organisations. She said that it would be a better approach to circulate all the submissions received first and the Bills Committee could decide later on the need to invite oral presentation.

6. As to the time frame for the scrutiny of the Bill, the Assistant Legal Adviser 1 (ALA 1) advised that since the Public Revenue Protection (Revenue) Order 1999 would cease to be in force upon the expiration of four months from the day on which the Order came into force, the Bills Committee would be expected to complete its scrutiny of the Bill within the validity period of the Order. The Secretary for the Treasury (S for Tsy) said that the Administration hoped that the scrutiny of the Bill could be completed within the current LegCo session. Members noted that if the Second Reading debate on the Bill was to resume within the current session, the scrutiny of the Bill had to be completed by the end of June 1999.

7. Having regard to the different views expressed, the Chairman summarised the available options for conducting public consultation as follows -

- (a) to draw up a list of organisations to be invited;
- (b) to issue an advertisement to invite views on the Bill; and
- (c) to issue a press release to invite views on the bill and to consider at a later stage the need for oral presentation.

8. The Chairman put the various options to a vote. With the exception of

Mr CHAN Kam-lam, all members present supported issuing a press release to invite views on the Bill. Members agreed that the deadline for receiving submissions was 7 May 1999.

The Propriety of the Public Revenue Protection (Revenue) Order 1999

9. The Chairman reminded members that the deadline for giving notice of a motion to amend the Order was 5 May 1999. She invited ALA1 to summarize the arguments concerning whether the provisions of the Order were consistent with the legislative intent of the Public Revenue Protection Ordinance, Cap. 120.

10. ALA 1 said that the power of the Chief Executive to make the Order was clearly stated in section 2 of the Public Revenue Protection Ordinance. According to the principles set out in *Pepper v. Hart*, it was not necessary to refer to the speeches made by the Administration or LegCo members when the Ordinance was enacted in 1927 or amended in 1974 when interpreting section 2. In her view, the assurance given by the then Attorney General in 1974 at the resumption of the Second Reading debate on the Public Revenue Protection (Amendment) Bill 1974, that the Ordinance would not be used except for its true purpose of protecting the revenue, was a gentleman's agreement that did not have any legal effect. Whether the meaning of revenue should be “公共收入” or “稅收” was subject to the interpretation of the court. The Administration's interpretation, however, ignored the Chinese text which should be equally authentic pursuant to section 10B of the Interpretation and General Clauses Ordinance (Cap. 1). Moreover, the Chinese rendition for "revenue" in other ordinances was “稅收” and the term did not include fines and penalties.

11. ALA1 said that she had reservations on the Administration's statement that the civil or criminal nature of fines or penalties had no relevance. She pointed out that any proposal suggesting retrospectivity of criminal penalties would be against the spirit of Article 39 of the Basic Law and Article 12 of Hong Kong Bill of Rights (BOR) Ordinance, Cap. 383. In this case, however, there was no legal consequence because the proposed increases in fixed penalties under the Bill would not take effect until 1 August 1999.

12. The Chairman pointed out that whilst the Administration had the authority under section 2 of the Public Revenue Protection Ordinance to include all revenue proposals in the Order, given the assurance given by the then Attorney General in 1974, it became a policy matter on whether the Administration should adopt the new approach of combining all revenue proposals in an omnibus revenue bill. As the Administration might continue to adopt such an approach in future, members would have to decide whether this should be supported.

13. Noting that it was legally permissible for the Administration to take the

new approach, Mr LEE Cheuk-yan was concerned whether this approach was contrary to the legislative intent of the Public Revenue Protection Ordinance. He enquired whether the Administration intended to take this approach in future and if so whether there was a need to amend the Public Revenue Protection Ordinance.

14. S for Tsy said that the Administration would need more time to consider whether the Public Revenue Protection Ordinance should be amended. If the Ordinance was amended in such a way to cover revenue raising proposals only, the Administration would not be able to introduce the revenue concessions such as those relating to diesel duty and declaration charges in the Bill. Given the rigid drafting of the existing section 2, the Administration would consider substituting the word “all” with “any”, so that revenue proposals which did not take immediate effect need not be covered by the revenue order. S for Tsy said that since the 1999 Order had already come into force, the Administration did not intend to amend the Order. The Administration had also no intention of amending the Bill at the present stage.

15. ALA 1 advised that under section 34(2) of the Interpretation and General Clauses Ordinance, Cap. 1, LegCo might amend subsidiary legislation tabled in the Council in any manner whatsoever consistent with the power to make such subsidiary legislation. As section 2 of the Public Revenue Protection Ordinance conferred on the Chief Executive the power to make or not to make an order, LegCo could support or reject the Order in whole but could not amend it.

16. The Law Officer (Civil Law) (Acting) Department of Justice (LO(Ag)) affirmed ALA 1's view that LegCo could pass a resolution under section 34(2) to repeal the Order but could not amend it. He stressed that if the Order was repealed, the revenue concessions would also be removed.

17. In response to Mr LEE Cheuk-yan's enquiry about the possibility of re-introducing revenue concessions through a Member's motion, ALA 1 said that the right of a Member to move a motion in LegCo was subject to the Rules of Procedure of the Council. She would provide written advice on whether a Member could move a motion or motions to give effect to the revenue concession proposals in the Budget.

18. Mr Andrew WONG doubted if proposals which were voted down could be re-introduced within the same LegCo session. He also drew members' attention to the Rule of Anticipation which stated that a matter should not be anticipated if it was contained in a more effective form of proceeding than the proceeding by which it was sought to be anticipated. It followed that the debate on the revenue proposals should not take place in the context of the Order, but should be dealt with in the context of the Bill. The Chairman requested ALA 1 to provide legal opinion on whether the Rule of Anticipation would be contravened if a Member move a motion to repeal the Order.

(*Post-meeting* note: A paper on the Rule of Anticipation and the moving of a Member's motion to effect revenue concession proposals was prepared by ALA 1 and circulated to members vide LC Paper No. CB(1)1318/98-99(01))

The Administration's response to the concerns raised at the meeting on 21 April 1999

19. At the request of the Chairman, S for Tsy explained the Administration's response to the concerns raised by members at the meeting on 21 April 1999 which was set out at LC Paper No. CB(1)1196/98-99(02). She highlighted the following main points -

- (a) The Administration considered it entirely proper and lawful to include "fixed penalties" which were items of revenue in the Public Revenue Protection (Revenue) Order 1999;
- (b) There was no question of retrospectivity of criminal sanctions in relation to the proposed increase in fixed penalties for traffic-related offences, since these increases would not apply to traffic offences which occurred before the increases took effect;
- (c) Adjustments of fixed penalty levels had always been carried out independently in the past and the Administration did not consider it necessary to apply adjustments across-the-board to cover other fines and penalties;
- (d) Consequential amendments had to be included in the Bill to enable the collection of the revised Cross-Harbour Tunnel tolls as from 1 September 1999; and
- (e) It was the Administration's intention to continue with the new approach of combining all revenue proposals in an omnibus bill for consideration by LegCo in future.

The deterrent effect of fixed penalties for traffic-related offences

20. Mr CHENG Kar-foo said that with the decline in the number of traffic related offences committed since the last adjustment of the levels of penalties in 1994, he failed to see the need for increasing the fixed penalties to maintain the deterrent effect. He did not agree that the deterrent effect had been eroded by inflation as Hong Kong was facing deflation in the recent economic crisis.

21. S for Tsy said in response that the cumulative inflation from 1994 to 1998 was about 26.4%. Deflation was only recorded in early 1999 and was estimated at 2% only. The proposed adjustment of fixed penalties was meant to keep in line with the net inflation since 1994 to prevent erosion of the deterrent effect. The Assistant Commissioner for Transport (AC for T)

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explained that the decline in the number of fixed penalty tickets(FPTs) issued over the years was not solely attributed to the deterrent effect of the penalty charges. This was partly due to the flexible prosecution policy and the package of traffic improvement measures implemented by the Transport Department including the increased supply of parking facilities.

22. Mr CHENG Kar-foo expressed concern that career drivers were already hard hit by the present economic downturn and the proposed increase in fixed penalties and traffic-related charges would add a further blow to them. AC for T said that the average number of FPTs issued for stationary and moving offences in 1998 was 1.1 and 2.4 respectively per vehicle. Based on this calculation, a taxi driver and a public light bus driver received an average of 2.5 FPTs and 2.7 FPTs per year respectively. S for Tsy added that the last three adjustments to penalty levels were made in 1983, 1989 and 1994 with the same purpose of preventing erosion of the deterrent effect by inflation. Taxi drivers and minibus drivers had had net increases in income since the last adjustment of penalty levels in 1994. With the proposed increases, it was hoped that the number of FPTs issued to each driver would be less than two per year. In response to members, the Administration would provide, in the form of a graph, the respective numbers of prosecution cases in respect of stationary and moving offences since 1994 with a breakdown by type of vehicles and by years.

(Post-meeting note: The requisite information was provided by the Administration and circulated under LC Paper No. CB(1)1251/98-99(02))

23. Mrs Miriam LAU enquired about the intended deterrent effect to be achieved by the proposed increases. She said that the number of FPTs issued had already been declining from 230,000 in 1997 to 170,000 in 1998. She considered that the fixed penalty of \$450 which was more than a day's income for most taxi drivers had constituted sufficient deterrent effect. She queried if there was a quota on the number of FPTs issued and whether drivers who had already been issued with more than 2.5 FPTs would be spared from further ticketing.

24. S for Tsy assured members that the Treasury had never and would not impose a quota on the number of FPTs to be issued by the Police. She reiterated that the decline in the number of FPTs was partly due to the implementation of a package of traffic improvement measures by the Transport Department. For example, the increase in the number of 15-minute parking meters had facilitated career drivers in finding parking spaces when making rest stops and discouraged illegal parking. AC for T added that the package of improvement measures implemented by the Transport Department certainly played a role in reducing the number of FPTs issued although the effect was difficult to be quantified.

25. Mr SIN Chung-kai queried whether the proposed increase in fixed

penalties was meant to achieve a deterrent effect or to increase revenue. S for Tsy said in response that an adjustment to fixed penalties was aimed to deter contravention of traffic-related offences and the increase in revenue was only incidental.

26. Mrs Selina CHOW opined that a number of the revenue proposals in the Bill would seriously affect drivers and car retailers. Car retailers had been hard hit by the economic downturn. The increase in on-street meter parking charges would also have the chain effect of pushing up carpark charges. She noted with concern that the revenue proposals picked at drivers and the transport-related industries selectively.

27. S for Tsy said in response that there was no intention on the part of the Administration to target revenue increases at a certain category of persons. The Administration forecast a budget deficit in 1999 and up to 2001. There was thus a need to introduce revenue raising measures to restore public finance to a healthier state. All the revenue raising measures proposed in the 1999-2000 Budget were made on a highly selective basis to minimise the impact on the community as the other option of raising revenue by widening the tax base would affect more people more seriously. The tunnel tolls for Cross-Harbour Tunnel and the Lion Rock Tunnel had not been adjusted for many years. When considering the items and the magnitude of increases, the Administration had already taken into account the affordability of those who would be affected.

Prosecution policy for traffic-related offences

28. Responding to Mr LEE Cheuk-yan's enquiry about the prosecution policy on traffic-related offences, AC for T said that the prosecution policy was to reduce traffic accidents, to maintain traffic flow and to facilitate road users. The Police had been tolerant of illegal parking which had not caused obstruction to the traffic flow. In response to Mrs Miriam LAU, the Administration agreed to invite representatives from the Police to explain the prosecution policy at the next meeting.

Relaxation of speed limit and other transport measures

29. Mr Albert HO queried whether some offences such as speeding offence and illegal parking offence were committed because of shortage in parking facilities and unclear road signs and speed limit signs. He pointed out the need to relax the speed limit for certain roads and improve speed limit signs. AC for T said that road safety was the prime concern of the Transport Department. A Working Group formed to oversee the installation and upkeep of road signs had been working closely with the Lands Department and the Highways Department to ensure that road signs would not be inadvertently blocked by trees or other signs. As regards speed limits, these were being set in accordance with the road design to ensure road safety. Statistics showed

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that a great number of traffic accidents was due to over-speeding. A comprehensive review of the speed limits for major roads and expressways was underway. The review was an ongoing exercise which aimed at fixing suitable speed limits.

30. Mr Albert HO further questioned if it was appropriate to increase fixed penalty charges at this stage when all the traffic improvement measures had yet to be implemented. He pointed out that it would only be fair to consider adjustments of fixed penalties after all the improvement measures had been put in place. AC for T said that the implementation of traffic management measures was an ongoing exercise and there was no definitive completion date. Improvement measures were made as and when necessary to meet the needs of the community. AC for T added that the decision to relax the speed limits for certain roads was not, as claimed by Mr HO, made by the Executive Council but by the Administration in consultation with the transport trade and the public. In response to members, the Administration would confirm whether the decision to relax the speed limits was made by the Executive Council.

(Post-meeting note: The Administration confirmed in its response circulated under LC Paper No. CB(1)1251/98-99(02) that the decision to relax speed limits was not made by the Executive Council.)

The new approach of using an omnibus revenue bill

31. The Chairman asked whether the increases in fixed penalties should more appropriately be dealt with as amendments to the relevant legislation than in the context of the Revenue Bill. S for Tsy said that the Administration did not consider it inappropriate to include adjustments to fixed penalty levels in the Revenue Bill. The new approach of combining revenue proposals in one omnibus bill had the merit of facilitating scrutiny of the Budget legislation by members.

32. Mr SIN Chung-kai was concerned that the new approach had caused considerable debate. He enquired whether the Administration would review the new approach before the next year's Budget, and if so, the timetable for the review and the method of consultation with members. S for Tsy said that she could not provide a specific timetable for review at this stage. The Administration would need more time to consider the issue carefully. Some members' suggestion of combining the revenue bill and the appropriation bill would require amendments to the Public Finance Ordinance (Cap. 2). Another suggestion of introducing the revenue bill before the appropriation bill might not contravene the provisions of the Public Finance Ordinance but the arrangement would require careful examination. The Chairman considered it important that the Administration should make an early decision on the matter and keep members informed before preparing the next year's Budget.

33. Miss Christine LOH enquired whether the Administration would consider

introducing amendments to the relevant legislation to effect the increases in fixed penalties if Members did not support such increases in the context of the Revenue Bill. S for Tsy said that the Administration considered the present approach of combining all revenue proposals in one omnibus Revenue Bill an acceptable arrangement and had no intention of amending the Bill. Miss LOH said that she would consider moving an amendment to raise the fixed penalty for smoky vehicles under the Revenue Bill. If this was not possible, she might consider dealing with the increase separately in the relevant legislation at a later stage.

34. Mrs Miriam LAU said that her concern was not the approach of dealing with increases in fixed penalties but the effect of such increases.

35. Mr LEE Cheuk-yan asked whether it was appropriate to include consequential amendments to the Road Tunnels (Government) Ordinance (Cap. 368) in the Revenue Bill. S for Tsy stressed that there was a need to introduce amendments to the Road Tunnels (Government) Ordinance to cover Cross-Harbour Tunnel and to collect higher tunnel tolls with effect from 1 September 1999. These amendments were necessary and were not made for the purpose of expediency. LO(Ag) added that the consequential amendments were necessary to enable the Government to charge the increased Cross-Harbour Tunnel tolls. Confusion would arise if these amendments were not included in one complete package.

36. In response to Mr LEE Cheuk-yan, ALA 1 was requested to provide legal opinion on whether the consequential amendments set out in clauses 46, 47 and 48 of the Revenue Bill were outside the ambit of the Bill and whether the ruling of the President of the Legislative Council on the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill and the Equal Opportunities (Race) Bill was relevant.

(Post-meeting note: The legal opinion was contained in a paper prepared by ALA1 which was circulated vide LC Paper No. CB(1)1318/98-99(01))

37. Mr Andrew WONG clarified that he had not suggested the introduction of the revenue bill before the appropriation Bill. In fact, he was against such a proposal because the controversial nature of some revenue proposals would require a long scrutiny period, resulting in a delay to the passage of the appropriation bill. He would prefer to adhere to the previous arrangement. He agreed that with the empowering provisions under section 2 of the Public Revenue Protection Ordinance, the Administration could combine all revenue proposals under the Public Revenue Protection (Revenue) Order. The crux of the matter was whether the scope of the Order should contain all revenue proposals including those which would take effect four months later. He was of the view that revenue items which were not adjusted immediately should not be included in the Order.

38. Mr Albert HO enquired if the penalty provisions were to be implemented on 1 April 1999 instead of 1 August 1999, whether these would contravene the Bill of Rights Ordinance. LO(Ag) confirmed that the penalty provisions, even if implemented on 1 April 1999, would not contravene the Bill of Rights Ordinance because the Order had full legislative effect and the question of retrospectivity would not arise.

39. The Chairman and Mrs Selina CHOW queried whether it would amount to a breach of the Basic Law to increase criminal penalties by means of an executive order. They were concerned that even if it was permissible under the Basic Law to make such an order, whether it was consistent with the spirit of the Basic Law. The Chairman considered that there might be a need to examine the new approach in another forum. S for Tsy said that the Administration would take into consideration the various points raised by the Bills Committee in its review.

40. Members agreed that the second and third meetings of the Bills Committee would be held on 4 May 1999 at 10:45 am and 11 May 1999 at 2:30 pm respectively.

(Post-meeting note: On the advice of the Chairman, the third meeting was re-scheduled for 13 May 1999 at 8:30 am)

II Any other business

41. There being no other business, the meeting ended at 10:30 am.

(Post-meeting note: A report on the deliberations of the Subcommittee on the Order was made to the House Committee on 30 April 1999.)

Legislative Council Secretariat
8 November 1999