

立法會***Legislative Council*****LC Paper No. LS 179/98-99****Paper for the Bills Committee on Revenue Bill 1999*****Introduction***

At the meeting of the Bills Committee on 26 April 1999, Members requested the Assistant Legal Adviser to prepare a paper advising :

- (a) whether the rule of anticipation would be contravened if Members move a motion repealing the Public Revenue Protection (Revenue) Order 1999, published in the gazette as L.N. 90 of 1999 and laid on the table of the Legislative Council on 31 March 1999 (“the Order”);
- (b) whether a Member may move a motion or motions to give effect to the revenue concession proposals announced in the Budget Speech delivered by the Financial Secretary on 3 March 1999 when moving the Second Reading of the Appropriation Bill 1999 (“the Budget Speech”);
- (c) whether the consequential amendments set out in clauses 46, 47 and 48 of the Revenue Bill 1999 (“the Bill”) are outside the ambit of the Bill, and whether the Ruling of the President of the then Legislative Council on the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill and the Equal Opportunities (Race) Bill (“the Ruling”) is relevant.

I. Whether the rule of anticipation would be contravened if Members move a motion repealing the Order.

2. The rule of anticipation is a parliamentary practice followed by the House of Commons in England (according to Erskine May, Parliamentary Practice, Twenty-second Edition). The rule means that a matter must not be anticipated if it were contained in a more effective form of proceeding than the proceeding by which it was sought to be anticipated. The Administration argues that since both the Order and the Bill aim at implementing the revenue proposals 1999-2000 Budget, amendments to the Order are premature and should be postponed to the debate on the Bill.

3. It is uncertain the extent to which the rule of anticipation is established in Hong Kong, especially when no such provision has been made in the Rules of Procedure of the Legislative Council. Leaving aside the question of whether this rule has been established in the Legislative Council, it applies only when the same matter would be dealt with in a more effective proceeding. It may be argued that the Council is dealing with a different matter when passing a resolution to repeal the Order because it concerns when the Administration can start collecting revenue. Hence, members may object to the inclusion of certain provisions of the Bill in the Order but do not object to those provisions being made in the Bill.

4. It is also worth pointing out that the two legal instruments in question were made for different purposes. The Order is a temporary and provisional measure. The implementation of that measure is authorised by law and is subject to legislative scrutiny under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1). The Bill is introduced as a legislative proposal which, if passed, with or without amendment, will become permanent law. It would be quite illogical and futile to compare the relative effectiveness of the two proceedings because they serve different purposes. Suffice it to say that even if the Order is repealed, there is no legal restriction prohibiting the Chief Executive in Council from making another Public Revenue Protection Order, or the Administration from presenting the Bill into the Legislative Council in its original form.

5. According to Erskine May, there have been several occasions in recent years when the rule of anticipation has not been applied by the House of Commons. It may therefore be taken that as a matter of principle, exceptions could be made to such rule especially if the application of it would frustrate a substantive power of the Legislature.

6. For members' information, the Committee on Rules of Procedure has agreed to consider the need for incorporating the rule of anticipation in the Rules of Procedure as one of the less urgent issues on its agenda. In the interim, it is a matter for the President of the Legislative Council to decide whether to take this rule of anticipation into account when she makes a ruling.

II. Whether a Member may move a motion or motions to give effect to the revenue concessions proposals announced in the Budget Speech.

7. A Member may move a motion in the Legislative Council subject to the restrictions imposed in the Rules of Procedure of the Council. Rule 31 provides that a motion, the object or effect of which may, in the opinion of the President, be to dispose of or charge any part of the revenue or other public moneys of Hong Kong shall be proposed only by -

- (a) the Chief Executive; or
- (b) a designated public officer; or
- (c) a Member, if the Chief Executive consents in writing to the proposal.

Since the motion is intended to give effect to the concessions proposed in the Budget Speech, a Member must obtain the written consent of the Chief Executive.

8. Of all the concessions proposed in the Bill, the only proposal which may be effected by resolution of the Council is the extension of duty on light diesel oil at a reduced rate of \$2 until 31 March 2000 (Clause 8). All other proposals must be effected by way of a bill.

III. Whether the consequential amendments set out in clauses 46, 47 and 48 of the Bill are outside the ambit of the Bill, and whether the Ruling is relevant.

9. In April 1997, the President of the then Legislative Council ruled that the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill and the Equal Opportunities (Race) Bill intermix two separate subjects which have no proper relation to each other and have offended clause XXV(3) of the Royal Instructions. Since 1 July 1997, the Royal Instructions have ceased to apply and there is no such rule in the Rules of Procedure nor in the Basic Law.

10. Rule 50 of the Rules of Procedure is relevant in that subrule (3) requires the bill to be given a long title setting out the purposes of the bill in general terms. The rule envisages that a bill may have more than one purposes. The long title of a bill is important during the legislative process in that it may have effect to limit debate or amendment of the bill. Indeed, rule 57(4) of the Rules of Procedure provides that an amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates.

11. The long title of the Bill states that the Bill is to amend certain Ordinances to give effect to the proposals in the Budget introduced by the Government for the 1999-2000 financial year, and for connected purposes. The concluding phrase “and for connected purposes” is used to include miscellaneous related matters of a minor nature.

12. Paragraph 169 of the Budget Speech sets out the revenue proposal of the Government to abolish the Cross-Harbour Tunnel passage tax and to increase the tolls for private cars and motorcycles. The Financial Secretary also mentioned that the ownership of the Cross-Harbour Tunnel (“the Tunnel”)

will revert to the Government when its present franchise expires in September 1999.

13. Clauses 33 to 36 and clause 37 (except paragraph (b)) of the Bill propose to amend the Road Tunnels (Government) Ordinance (Cap. 368) and the Road Tunnels (Government) Regulations (Cap. 368 sub. leg.) to :

- (a) provide for the application of that Ordinance to the Tunnel; and
- (b) prescribe tolls for the use of the Tunnel.

14. Insofar as the proposal to abolish the Cross-Harbour Tunnel passage tax is concerned, it is effected by way of consequential amendment in clause 47. The consequential amendments proposed in clauses 46, 47 and 48 of the Bill respectively seek to :

- (a) repeal the Cross Harbour Tunnel Ordinance (Cap. 203) and all its subsidiary legislation;
- (b) repeal the Cross-Harbour Tunnel (Passage Tax) Ordinance (Cap. 274) and all its subsidiary legislation;
- (c) empower the Secretary for Transport to make regulation providing for such consequential amendments to any Ordinance or subsidiary legislation and such savings and transitional arrangements as are required or expedient consequent on the repeal of the above two Ordinances.

15. To the extent that the revenue proposals are restricted to the abolition of the Cross-Harbour Tunnel passage tax and the increase of tolls for use of the Tunnel by private cars and motorcycles, clauses 33, 34, 37(c) and (d) of the Bill are, in our opinion, sufficient to give the requisite legal effect. In such circumstances, consequential amendments of these clauses may be limited to the repeal of the First Schedule to the Cross-Harbour Tunnel (Passage Tax) Ordinance (Cap. 274) and the Cross-Harbour Tunnel Tolls (Cap. 203 sub. leg.) (see Annex A).

16. We believe that it is legally feasible for the Administration to provide for repeal of the Cross-Harbour Tunnel Ordinance (Cap. 203) and the Cross-Harbour Tunnel (Passage Tax) Ordinance (Cap. 274) ("the two related Ordinances") as well as for reservation of the regulation-making power in another legislative exercise. The franchise has been granted pursuant to section 4 of Cap. 203 (see Annex B) and its expiry is not incumbent on the repeal of that Ordinance. The Ordinance will become obsolete in September 1999. For members' information, the LegCo Panel on Transport has received

a briefing from the Transport Bureau at its meeting on 23 April 1999 on the Road Tunnels (Government) (Amendment) Bill 1999 to be introduced into the Legislative Council. The Administration has suggested that the legislative proceedings of this amendment bill be completed before 1 September 1999 because it caters for the operational requirements specific to the Tunnel.

17. On the other hand, the Administration's decision to include (i) the remaining clauses 35, 36, 37(a), (e) and (f) (which relate to the imposition of removal and permit fees) in the Bill and (ii) the repeal of the two related Ordinances in the form of consequential amendments may be based on the following grounds :

- (a) repeal of the two related Ordinances is consequential to clause 33 which specifies that Road Tunnels (Government) Ordinance (Cap. 368) applies to the Tunnel;
- (b) the provisions may be relevant in the context of "connected purposes" to the Budget proposals;
- (c) the provisions fall within the category of "administrative and general provisions" which are permissible to be included in a Public Revenue Protection Order under section 2(c) of the Public Revenue Protection Ordinance (Cap. 120);
- (d) the Administration regards the policy of not renewing the franchise with The Cross-Harbour Tunnel Company, Limited as part of the budget proposals.

18. The Bill is a legislative proposal presented by the Administration. There is no provision in the Rules of Procedure conferring power on the President of the Legislative Council to rule whether consequential amendments proposed in a bill are out of scope. Ultimately, passage of the Bills depends upon the acceptance of the Legislative Council. Upon enactment as an ordinance, the consequential amendments shall have full force and effect as the main provisions.

Encl

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