

立法會
Legislative Council

LC Paper No. LS 149/98-99

**Paper for the House Committee Meeting
of the Legislative Council
on 16 April 1999**

**Legal Service Division Report on
Public Revenue Protection (Revenue) Order 1999 made under
section 2 of the Public Revenue Protection Ordinance (Cap. 120)**

The Public Revenue Protection (Revenue) Order 1999 (L.N. 90 of 1999) (“the Order”) was gazetted on 30 March 1999 and laid on the table of the Legislative Council on 31 March 1999. This is a temporary measure taken under the Public Revenue Protection Ordinance (Cap. 120) (“the Ordinance”) to give effect to most of the revenue 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 Revenue Bill 1999 (“the Bill”) giving long-term effect to these proposals will be introduced into the Legislative Council following the ordinary legislative procedures. The Administration has given notice to present the Bill in the Legislative Council on 21 April 1999.

2. Under section 2 of the Ordinance, so long as the Order remains in force, it shall have the full force and effect of law. Section 5(2) provides that 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 or resolution in respect of which the order was made; or
- (b) upon the notification in the Gazette of the withdrawal of the bill or resolution or order; or
- (c) upon the bill or resolution, 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.”

3. Under section 6 of the Ordinance, any excess of duty, tax, fee, rate or other item of revenue paid under the Order over that payable immediately after the expiry of the Order shall be repaid to the person who paid the same.

4. The Order contains the Bill in the Schedule. We have prepared a table (see **Annex A**) setting out the legal effect of the Bill and the corresponding parts of the Budget Speech to which the proposals are referred. Members may refer to LegCo Brief File Ref. FIN CR. 7/2201/98 on the Bill issued by the Finance Bureau on 30 March 1999 for background information.

5. The Order has come into force on 1 April 1999. However, by virtue of clause 2 of the Bill in the Schedule to the Order :

- (a) the betting duty on horse races would come into effect on and after 1 September 1999;
- (b) the proposals relating to the Cross-Harbour Tunnel would take effect on and after 1 September 1999;
- (c) the proposed increases in fixed penalties would take effect on and after 1 August 1999.

6. The long title of the Ordinance states that the Ordinance is to protect the revenue of Hong Kong. It is clear from the provisions of the Ordinance that any order made thereunder is intended to be a provisional and temporary measure for the purpose of preventing the avoidance of payment of tax. Since the inclusion of the concessions (listed in paragraph 3 of the LegCo Brief) and the proposals that do not take immediate effect (listed in paragraph 5 above) does not serve such purpose, we have asked the Administration to provide the reasons for this inclusion in the Order.

7. The Administration relies on section 2 of the Ordinance (see **Annex B**) as their legal basis for making the Order. That section provides that if the Chief Executive approves of the introduction into the Legislative Council of a bill, he may make an order giving full force and effect of law to *all the provisions of the Bill* (italics added). Since the Administration has decided on the format of an omnibus bill, that bill must be set out in the Order in its entirety. In addition, the Administration is of the view that concessions can be included because section 2 covers “removal” or “alteration” (i.e. increase or decrease) of any duty, tax, fee, rate or other item of revenue.

8. There does not appear to have any legal restrictions preventing the Administration from introducing an omnibus bill which includes all the revenue proposals (except the tax rebate) announced in the Budget Speech on 3 March 1999. However, by invoking section 2 of the Ordinance to make a Public Revenue Protection Order, the Administration has made it impossible for itself to honour the assurance given by the then Attorney General in December 1974 at the Second Reading debate of the Public Revenue Protection (Amendment) Bill 1974 in which the

Administration assured the Legislative Council that the Ordinance will not be used except for its true purpose of protecting the revenue (see **Annex C**). Furthermore, it has created the anomaly that proposals which are not properly within the scope of a Public Revenue Protection Order have been included because of the requirement that the Order has to include all the provisions of the Bill.

9. In our view, the fixed penalties imposed under the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237) and the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) proposed to be increased under clauses 23 and 25 of the Bill do not fall within any of the descriptions of revenue referred to in section 2 of the Ordinance. The Administration argues that “revenue (稅收)” in this context means “general revenue (政府一般收入)”, which includes income from fixed penalties.

10. The Administration’s interpretation ignores the rendition for “revenue” in the Chinese text of the Ordinance. Section 10B of the Interpretation and General Clauses Ordinance (Cap. 1) provides that the English language text and the Chinese language text of an Ordinance shall be equally authentic, and the provisions of the Ordinance are presumed to have the same meaning in each authentic text. Where a comparison of the authentic texts discloses a difference of meaning, the meaning which best reconciles the texts, having regard to the object and purposes of the Ordinance, shall be adopted. In accordance with this principle of construction, we believe that “revenue” in the English text should have a narrow meaning in order to reconcile with “稅收” in the Chinese text. It should not include fines or penalties imposed by or under the authority of any Ordinance.

11. In accordance with section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1), any amendment to the Order has to be made by 28 April 1999, or by 5 May 1999 if the intervention period is extended by resolution of Legislative Council.

Encl

Prepared by

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8 April 1999

Revenue Bill 1999

Clauses of the Bill in Schedule to the Order	Paragraphs in the 1999-2000 Budget Speech	Legal Effect
Clauses 3 and 4	Paragraph 151	The Import and Export (Registration) Regulations (Cap. 60 sub. leg.) would be amended to reduce the charge imposed under the Regulations in respect of re-exports from Hong Kong, so that there will be a uniform charge for all export declarations. ¹
Clauses 5 to 7	Paragraphs 167 and 168	The Betting Duty Ordinance (Cap. 108) would be amended to increase the rates of duties imposed on exotic bets on horse races from 18% to 19% and on lottery proceeds from 20% to 25%, and to correspondingly reduce the percentages of the bets and proceeds to be allocated in prizes. ²
Clause 8	Paragraphs 152 to 154	Resolution of Legislative Council (L.N. 288 of 1998) made and passed under the Dutiable Commodities Ordinance (Cap. 109) would be amended to maintain the duty on light diesel oil at a reduced rate of \$2 per litre until 31 March 2000.
Clauses 9 and 10	Paragraph 157	The Estate Duty Ordinance (Cap. 111) would be amended to exempt from estate duty the moneys payable under and interests in a policy of insurance effected on the life of a deceased person. ³

¹ The proposed reduction would apply to an export declaration on which the shipment date specified is on or after 1 April 1999.

² The increase in betting duty on horse races would take effect on and after 1 September 1999.

³ The proposed exemption would apply in relation to the estates of persons dying on or after 1 April 1999.

Clauses of the Bill in Schedule to the Order	Paragraphs in the 1999-2000 Budget Speech	Legal Effect
Clauses 11 and 12	Paragraph 155	The Inland Revenue Ordinance (Cap. 112) and the Inland Revenue (Qualifying Debt Instruments) Order (Cap. 112 sub. leg.) would be amended to reduce the minimum denomination to \$50,000 or its equivalent in foreign currency for newly issued debt instruments in respect of which interests and trading profits are subject to profits tax at concessionary rates.
Clauses 13, 14 and 16(a)	Paragraph 155	The Stamp Duty Ordinance (Cap. 117) would be amended to remove the existing execution requirements in respect of a contract note for the sale or purchase of Hong Kong stock effected through the Stock Exchange of Hong Kong Limited.
Clauses 16(b) to (e) and 17	Paragraph 155	The Stamp Duty Ordinance (Cap. 117) would be amended by - <ul style="list-style-type: none"><li data-bbox="842 1397 1390 1585">(a) removing the requirement that the borrowed stocks have to be returned to the lender within 12 months after the stocks are borrowed;<li data-bbox="842 1592 1390 1780">(b) specifying requirements for stamp duty exemption to be granted, including the requirements to return specified stock and to make specified payment;<li data-bbox="842 1787 1390 1928">(c) amending the registration requirements in respect of stock borrowing and lending agreements.

Clauses of the Bill in Schedule to the Order	Paragraphs in the 1999-2000 Budget Speech	Legal Effect
Clauses 15, 18, 19, 20 and 21	Paragraphs 161 to 166	<p>The Stamp Duty Ordinance (Cap. 117) would be amended to -</p> <ul style="list-style-type: none"> (a) specify the circumstances under which a cancelled chargeable agreement for sale is not subject to stamp duty; (b) provide for a deferred payment of stamp duty on chargeable agreements for sale which would be implemented by a conveyance on sale; (c) revise the rates of stamp duty payable in respect of conveyances on sale, and agreements for sale, of immovable property.⁴
Clause 22	Paragraph 156	<p>The Air Passenger Departure Tax Ordinance (Cap. 140) would be amended to exempt passengers arriving and departing from Hong Kong within the same day from liability to pay air passenger departure tax.</p>
Clauses 23 and 24	Paragraph 173	<p>The Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237) would be amended to increase the fixed penalty imposed in respect of a contravention of the provisions of the Ordinance from \$320 to \$410. Consequentially, the Resolution of Legislative Council (Cap. 237 sub. leg.) would be repealed.⁵</p>

⁴ The proposals would apply to agreements for sale where the relevant date within the meaning of section 29B(3) of the Stamp Duty Ordinance (Cap. 117) is on or after 1 April 1999.

⁵ The proposals would take effect on and after 1 August 1999.

Clauses of the Bill in Schedule to the Order	Paragraphs in the 1999-2000 Budget Speech	Legal Effect
Clause 25	Paragraph 173	<p>The Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) would be amended to increase the fixed penalties imposed in respect of contraventions of the provisions of the Ordinance as follows :-</p> <ul style="list-style-type: none"> (a) from \$320 to \$410; (b) from \$450 to \$570; (c) from \$1,000 to \$1,270; (d) from \$230 to 300.⁶
Clauses 26, 27, 38 to 42, 44 and 45	Paragraph 150	<p>Various merchant shipping legislation would be amended to -</p> <ul style="list-style-type: none"> (a) reduce or abolish certain fees and charges; (b) remove the mandatory requirement for ships to be surveyed by Government surveyors.
Clauses 28 to 32	Paragraph 158	<p>The Business Registration Ordinance (Cap. 310) and the Business Registration Regulations (Cap. 310 sub. leg.) would be amended to provide for the issue of a business registration certificate and a branch registration certificate valid for 3 years upon an election being made.</p>
Clauses 33 to 37	Paragraphs 169 to 171	<p>The Road Tunnels (Government) Ordinance (Cap. 368) and the Road Tunnels (Government) Regulations (Cap. 368 sub. leg.) would be amended to -</p>

⁶ The proposed increase in fixed penalties would take effect on and after 1 August 1999.

Clauses of the Bill in Schedule to the Order	Paragraphs in the 1999-2000 Budget Speech	Legal Effect
		<ul style="list-style-type: none">(a) provide for the application of the Ordinance to the Cross-Harbour Tunnel;(b) prescribe tolls for the use of the Cross-Harbour Tunnel⁷; and(c) increase the toll for the use of Lion Rock Tunnel.
Clause 43	Paragraph 172	The Road Traffic (Parking) Regulations (Cap. 374 sub. leg.) would be amended to increase the maximum fees for the use of metered parking spaces and of pay and display parking spaces from \$2 to \$4 for every 15 minutes.

⁷ The proposals relating to Cross-Harbour Tunnel would take effect on and after 1 September 1999.

CAP.120 *Public Protection*

CHAPTER 120

PUBLIC REVENUE PROTECTION

To protect the revenue of the Colony.

[30 June 1927]

1. Short title

This Ordinance may be cited as the Public Revenue Protection Ordinance.

2. Provisional amendment of revenue legislation

If the Governor 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 Governor 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.

(Replaced 79 of 1974 s. 2)

3. Meaning of certain references

If any such order is made, references in the bill or resolution in respect of which the order is made to the commencement or coming into operation of such bill or resolution shall, so long as such order remains in force, be construed as references to the time of coming into force of such order.

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第 120 章 公共收入保障條例

第 120 章

公共收入保障條例

本條例旨在保障香港的稅收。

[1927 年 6 月 30 日]

1. 簡稱

本條例可引稱為《公共收入保障條例》。

2. 稅收法例的臨時修訂

如總督批准條例草案或決議提交立法局，而該條例草案或決議一旦成為法律，會使——

- (a) 任何稅項、費用、差餉或其他稅收項目得以徵收、撤銷或更改；或
- (b) 任何稅項、費用、差餉或其他稅收項目的寬免得以批准、更改或撤銷；或
- (c) 與稅項、費用、差餉或其他稅收項目有關的行政或一般條文得以制定、更改或撤銷，

則總督可作出命令，使該條例草案或決議的所有條文在該命令有效期內具有十足法律效力。

(由 1974 年第 79 號第 2 條代替)

3. 若干提述的涵義

如總督根據第 2 條就某條例草案或決議作出命令，該條例草案或決議內對本身的生效日期或開始實施日期的提述，在該命令有效期內，須解釋為對該命令的生效時間的提述。

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第 13 期

[SECRETARY FOR HOUSING]

**Landlord and Tenant (Consolidation)
(Amendment) Bill—second reading**

and District Courts to decide the effective date of any increase they may award; thirdly, it will enable landlords to obtain full details of all sub-tenancies; and, fourthly, it makes it unnecessary for parties entering into short-term tenancy agreements excluded under Part II, to make separate application for their exclusion under Part V.

Motion made. That the debate on the second reading of the bill be adjourned—SECRETARY FOR HOUSING.

Question put and agreed to.

**PUBLIC REVENUE PROTECTION (AMENDMENT)
BILL 1974****Resumption of debate on second reading (27th November 1974)**

Question proposed.

MR CHEUNG:—I take this opportunity to express Unofficial Members' concern over the use of the powers given by this ordinance earlier this year.

The sole purpose of the ordinance is to protect the Government from loss of revenue and no other. It was never intended that it should be used either for pre-empting the decisions of this Council on proposed changes in rates of tax, or for the convenience of the authorities entrusted with the duties of revenue collection.

When it was enacted in 1927, the Attorney General in moving the first reading said:

"At present it is essential that any proposal to increase such duties as the liquor duties should be introduced suddenly and without any previous publicity. Otherwise, of course, importers might clear stocks from Bond and so avoid payment of the increased duties. The result of that is this—when a proposal comes before the Legislative Council everyone feels the matter must be disposed of immediately and there is a temptation to give the matter less careful consideration in Council than if ample time were available. The proposal of this bill is that when any scheme to increase duties is to be put forward His Excellency the Governor

can bring the increased duties into operation at once. That order of the Governor is not permanent. It is provisional and temporary but before it ceases to have effect there is ample time for full discussion among the community, in the press and in this Council, of the new proposals. If they are adopted, of course the new duty remains in force. If the proposals are not adopted than the former position is restored and any duty paid in excess is refunded." May I pause here and emphasize those words the Attorney General used on that occasion, "Sir, any duty paid in excess is refunded." "This Ordinance" I continue the quotation "was suggested last October when the liquor duties were raised. It was made perfectly general so as to include all forms of revenue." There the quotation ends.

In a way, I regret that a suggestion to deal with liquor revenues appropriately was turned into an enactment that dealt with revenues generally; however, that is water under the bridge; but though the ordinance is general in form, the object, the protection of revenue against loss, is perfectly clear.

At the end of last February, His Excellency made orders under the ordinance in relation to changes in rates of duty as regards liquor and tobacco, and in the rate of the first registration tax on motor-vehicles. The use of the ordinance for increases in such duties and tax was, of course, amply within the objects of the ordinance.

But, doubtless prompted by my Friend the honourable Financial Secretary, His Excellency at the same time made orders under the ordinance in respect of the annual licence fee of vehicles, the annual rates on tenements in the New Territories, and the annual fees for business registration certificates.

With the utmost respect, Unofficial Members cannot think how taxpayers can avoid annual taxes of these kinds if no orders in relation to them had been made under the ordinance. Taxpayers cannot get away with them, as they can with revenues levied once and for all, like liquor tax and first registration tax. Unofficial Members are not persuaded, either, that the balance of convenience requires use of the ordinance for levies which are in character annual payments. And may I add, Sir, that pre-emptive bids are made only in bridge when you have a weak hand.

Tax changes of that kind which I have just referred to in our view ought not to be made until proposals to change them have been debated and decided upon in this Council. I am to say that Unofficial Members

[MR CHEUNG] **Public Revenue Protection (Amendment) Bill—resumption of debate on second reading (27.11.74)**

will not find it possible to support use of the ordinance in relation to annual taxes of this kind.

They have therefore asked me to seek an assurance from the Government that the ordinance will not be used for any purpose other than for the purpose of protecting the revenue.

THE ATTORNEY GENERAL:—I am grateful to the honourable Mr CHEUNG for his hints on bridge play. I note his remarks about the use earlier this year of the Public Revenue Protection Ordinance in certain cases. I hope he will understand if I do not enter into debate on that in the present context. In general, Sir, the Government is more than ready to give the assurance which Unofficial Members seek that the ordinance will not be used except for its true purpose of protecting the revenue, and of course, its use in any particular case is not intended to inhibit the consideration in this Council of budget proposals. That is clear, Sir, from the extract which my honourable Friend quoted from the speech in this Council of one of my predecessors. Accordingly, Sir, I give the assurance for which honourable Unofficial Members have asked.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order 43(1).

LAW REVISION (MISCELLANEOUS REPEALS) BILL 1974

Resumption of debate on second reading (27th November 1974)

Question proposed.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order 43(1).

FORESTRY (AMENDMENT) BILL 1974

Resumption of debate on second reading (27th November 1974)

Question proposed.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order 43(1).

HONG KONG PRODUCTIVITY COUNCIL (AMENDMENT) BILL 1974

Resumption of debate on second reading (27th November 1974)

Question proposed.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order 43(1).

Committee stage of bills

Council went into Committee.

PUBLIC REVENUE PROTECTION (AMENDMENT) BILL 1974

Clauses 1 and 2 were agreed to.

COMPANIES (AMENDMENT) BILL 1974

Clause 1

MR LEE:—Sir, I move that clause 1 be amended as set out in the paper before honourable Members.