

立法會
Legislative Council

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LC Paper No. CB(1)367/99-00

(These minutes have been
seen by the Administration)

**Subcommittee on
Public Revenue Protection (Revenue) Order 1999**

**Minutes of meeting held on
Wednesday, 21 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 Ronald ARCULLI, JP
Hon CHAN Yuen-han
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 Mrs Selina CHOW LIANG Shuk-ye, JP
- Public officers attending** : Miss Denise YUE
Secretary for the Treasury
- Mr Benedict LAI
Law Officer (Civil Law) (Acting)
Department of Justice
- Mr James O'NEIL
Deputy Solicitor General (Constitutional)
Department of Justice
- Mr Martin GLASS
Deputy Secretary for the Treasury

Miss Amy TSE
Principal Assistant Secretary for the Treasury

Ms Sherman CHAN
Senior Assistant Law Draftsman
Department of Justice

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

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

I Election of Chairman

Nominated by Mr Ronald ARCULLI and seconded by Mr LEE Cheuk-yan, Miss Margaret NG was elected Chairman of the Subcommittee.

II Meeting with the Administration

2. At the invitation of the Chairman, the Legal Adviser (LA) briefly took members through the Legal Service Division Report which was circulated under LC Paper No. LS 149/98-99. He explained that the Public Revenue Protection (Revenue) Order 1999 (the Order) was made under section 2 of the Public Revenue Protection Ordinance, Cap 120 (the Ordinance). This was a temporary measure to give effect to most of the revenue proposals in the 1999-2000 Budget. The Order had come into force on 1 April 1999 and would cease to be in force under the specified events under section 5(2) of the Ordinance.

3. Referring to paragraph 8 of the report, LA explained that the undertaking made by the then Attorney General in 1974 at the Second Reading debate of the Public Revenue Protection (Amendment) Bill 1974 that the Ordinance would not be used except for its true purpose of protecting the revenue was merely an assurance that did not have any legal effect. He further pointed out that 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 Revenue Bill 1999 (the Bill) did not fall within the descriptions of revenue referred to in section 2 of the Ordinance. He said that if penalties

were intended to be an item of revenue, they should have been covered by section 3 of the Public Finance Ordinance, Cap. 2 and section 17A requiring fines and penalties to be paid into the general revenue would not have been necessary. The enactment of section 17A was evident that fines and penalties did not form part of the public revenue and there was thus a need to spell out the accounting arrangement as to where they should be paid. LA further drew members' attention to section 2 of the Ordinance which provided that if the Chief Executive approved of the introduction into Legislative Council of a bill, he might make an order giving full force and effect of law to all the provisions. As the Administration had relied on this section as the legal basis for making the order and had adopted the format of an omnibus bill to give long-term effect to the revenue proposals in the 1999-2000 Budget, it had no choice but to include all revenue proposals, including proposed increases in fixed penalties, in the Bill.

4. Members noted that the notice to move a resolution to extend the scrutiny period of the Order until 5 May 1999 had been given by the Chairman of the House Committee and that the schedule to the Order contained the Bill.

5. The Chairman invited members to specify the clauses of the Bill which were of concern. Mr Ronald ARCULLI said that he was concerned about the proposed increases in stamp duty for property. The letter of the Assistant Legal Adviser 1 to the Administration dated 16 April 1999 (circulated vide Appendix IV to LC paper No. CB(1)1153/98-99) had summarized his concerns. Mrs Miriam LAU expressed concern about increases in fixed penalties for traffic-related offences. She said that the Subcommittee need to discuss whether it was proper to include in the Order revenue proposals which did not take effect on 1 April 1999 as this did not serve the purpose of protecting revenue. Her concern was shared by Mr SIN Chung-kai. Mr LEE Cheuk-yan was of the view that the Order was not consistent with the spirit of the Ordinance and that the Administration had failed to honour the assurance made by the then Attorney General in 1974 that the Ordinance would not be used except for its true purpose of protecting the revenue. He called on the Administration to withdraw the Order. Mr Albert HO raised concern about the issue of retrospectivity since the Order provided for increases in fixed penalties for traffic-related offences before the passage of the Bill. He considered it improper to deal with criminal sanctions in the context of a revenue bill.

6. At the invitation of the Chairman, the Secretary for the Treasury (S for Tsy) briefly took members through the Administration's paper which was circulated under LC Paper No. CB(1)1163/98-99. She explained that section 2 of the Ordinance provided the legal basis for the making of an order to cover a bill which set out revenue raising as well as revenue concession measures. The revenue proposals in the Order and the Bill were consistent with the spirit of the Ordinance. Referring to the First Reading of the Protection of Revenue

Bill in 1927, S for Tsy pointed out that the then Attorney General had stated that the Bill "was made perfectly general so as to include all forms of revenue". S for Tsy said that, as rightly pointed out by LA, the assurance given by the then Attorney General in 1974 that the Ordinance would not be used except for its true purpose of protecting the revenue was an undertaking which did not have legal effect. She stressed that the practice of making orders to give effect to Budget proposals had been adopted for many years. In 1975, the then Governor had made a total of 15 orders to give effect to the 1975-76 Budget proposals. Six of these orders were not related to levy of duties. The then LegCo had not queried these orders. Since 1975, the Administration had applied the Ordinance in a consistent manner. The revenue protection orders made in all these years covered amendments relating to revenue raising measures as well as revenue concessions. The making of the Public Revenue Protection (Revenue) Order 1999 was consistent with the making of revenue protection orders in the past and the Administration had not deviated from the past practice.

7. The Chairman enquired whether the Administration was bound by the assurance of the then Attorney General in 1974 and whether it considered the assurance still valid. S for Tsy confirmed that the assurance was still valid but the Administration was not legally bound by it. In the Administration's view, the 1999 Order was not inconsistent with the 1974 undertaking. S for Tsy stressed that the actions taken by the Administration since 1975 were in full compliance with the spirit of the assurance given by the then Attorney General in 1974. In any case, the application of the assurance was subject to the provisions of the Ordinance, which formed the legal basis for the making of the revenue protection orders.

8. On the content of the Administration's undertaking, LA referred members to the Hansard on 23 June 1927 when the Ordinance was first introduced. LA said that the intention of the Ordinance was "to protect the community against the acts of individuals who would otherwise be able to avoid the payment of duties and taxation which the community, through its legislature, intended they should pay". The object of the Ordinance was to prevent the avoidance of increased duties by importers through stock-piling of dutiable commodities. He also drew members' attention to Mr Oswald CHEUNG's speech at the resumption of the Second Reading debate on the Public Revenue Protection (Amendment) Bill 1974 on 27 November 1974. Mr CHEUNG then said "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 the Council on proposed changes in rates of tax, or for the convenience of the authorities entrusted with the duties of revenue collection". LA said that although section 2 of the Ordinance was drafted in a broad way, the essence was to avoid payment of tax. The assurance then given by the Administration was two-fold: that it would use the Ordinance properly and that it would not pre-empt the decision of LegCo.

9. The Chairman concurred with LA on the narrow confine of the Ordinance to protect revenue and said that anything that went beyond this purpose would be inconsistent with the legislative intent.

10. S of Tsy reiterated that the Administration had been adhering to section 2 of the Ordinance in effecting the revenue proposals. The Acting Law Officer (Civil Law), Department of Justice (LO(Ag)) said that the then Attorney General had made it clear in 1927 that the term "revenue" in the Ordinance included all forms of revenue, not only liquor duties. The Public Revenue Protection (Amendment) Bill 1974 which sought to include new sections 2(b) and (c) to the Ordinance was to broaden the scope of revenue proposals to cover changes in allowances and other provisions. Following the passage of the Amendment Bill in 1974, the Administration had introduced a number of public revenue protection orders including proposals to increase interest tax and business registration fees.

11. Referring to the Hansard on 18 December 1974, Mr LEE Cheuk-yan opined that the undertaking given by the then Attorney General was in response to the assurance sought by the then Unofficial Members, i.e. that the Ordinance would not be used except for its true purpose of protecting the revenue. He was adamant that the 1999 Order had deviated from the 1974 undertaking that the power conferred in the Ordinance would not be used except for the true purpose.

12. S for Tsy pointed out that it was not uncommon for members and the Administration to have different views on matters of interpretation. If the meaning of revenue protection was so narrow as understood by some members, then section 2(b) which provided for changes in allowance should not have been enacted.

13. On the inclusion of revenue proposals which took effect after 1 April 1999, S for Tsy said that as an order made under section 2 of the Ordinance had to give "full force and effect of law to **all** the provisions of the bill", the Administration therefore had to include in the 1999 Order all the provisions in the Revenue Bill 1999, including the increase of the Cross-Harbour tunnel tolls which took effect from 1 September 1999.

14. The Chairman questioned whether the Administration considered it appropriate to include in the Bill proposals which were not directly associated with public revenue. S for Tsy said that the provisions in the Bill were related to revenue proposals directly or indirectly and included consequential amendments to such proposals. The approach of using an omnibus bill which included all the revenue proposals was entirely consistent with the provisions of the Ordinance.

15. Mr Andrew WONG said that if the intent of the Ordinance was merely to prevent the avoidance of duties by importers of dutiable commodities, then it would have a very narrow usage. He agreed that under the empowering provisions of section 2, the Administration could broadly apply the provisions to include a multiplicity of revenue items. In fact, this had been the practice over the years. He did not agree that the Ordinance could pre-empt the decision of LegCo because LegCo could reject the bill in respect of which an order was made. He considered that it was for the Courts to decide on matters of interpretation and it was difficult now to argue about the effectiveness of an undertaking which had been made years ago. Mr WONG opined that had the Administration chosen to adhere to the past practice of making separate orders for different revenue proposals instead of relying on an omnibus bill, the present confusion would not have arisen. He considered that some of the revenue proposals which did not take effect on 1 April 1999 should not be included in the order. They should be introduced later under a separate bill.

16. S for Tsy said that the introduction of an omnibus bill had the advantage of allowing Members to consider all revenue proposals as one complete package and facilitating them in scrutinizing the Budget legislation in a more comprehensive manner.

17. As to Mr CHENG Kar-foo's enquiry about refund of excess duties, S for Tsy concurred that it was difficult to arrange for refund for excess duty. She recalled that LegCo had passed an amendment in 1998 to dispense with the need to comply with section 6 of the Ordinance on refund of excess duty when the bill to increase diesel duty was voted down by LegCo. She said that it would be easier to make refund for excess of penalties than duties paid.

18. Mr Albert HO shared members' concern about the scope of application of the Ordinance, the validity of the assurance given in 1974 and the approach of including all revenue proposals in one omnibus bill. Referring to the word "may" in section 2, he enquired whether this should be taken to mean that the Chief Executive (CE) "may" choose to give effect to all the provisions of the bill or he may choose to give effect to some of the provisions. LO(Ag) said that the word "may" in section 2 meant that the CE "may" or "may not" make an order. As long as the bill complied with section 2(a), (b) and (c), then all the provisions of the bill would have to be included in the order. S for Tsy added that the existing wording of section 2 was rigid and left no room for flexibility. The Administration would consider amending this section to the effect that an order made under it might include only some provisions of the bill.

19. Responding to Mr CHENG Kar-foo's query about the appropriateness of including fixed penalties in the Order, S for Tsy said that the Administration's view was that fixed penalties were covered by the term "other

items of revenue” in section 2 of the Ordinance. Penalties fell under the revenue item “fines and penalties” which should be paid into the general revenue of Hong Kong as provided for under section 17A of the Public Finance Ordinance.

Admin. 20. The Chairman questioned whether it was appropriate to deal with increases in penalties in the context of the Revenue Bill 1999. S for Tsy said that the objective of adjusting fixed penalties for traffic-related offences was to offset the cumulative inflation since 1994. The Chairman pointed out that should this be the case, such an adjustment should apply across the board, and should not be limited to fixed penalties under the Fixed Penalty (Traffic Contraventions) Ordinance and the Fixed Penalty (Criminal Proceedings) Ordinance. S for Tsy said that all fines and penalties were imposed to achieve or maintain the desired deterrent effect. The Administration periodically adjusted levels of fixed penalties to ensure that their deterrent effect was not eroded by inflation. She agreed to provide more information about the proposed adjustment of fixed penalties for traffic-related offences for members' reference. Mr Andrew WONG did not agree that the proposal for increase of penalties should not be included in the Bill.

Admin. 21. Responding to Mrs Miriam LAU's enquiry about precedent cases in which adjustments of fixed penalties were included in a revenue protection order, S for Tsy referred members to Legal Notice 88 of 1975 which set out the Public Revenue Protection (Business Registration) Order 1975. This Order aimed at, amongst other things, increasing the penalties for non-payment of business registration fees. Members requested and the Administration agreed to provide a copy of the Legal Notice 88 of 1975 together with any additional information on the inclusion of fixed penalties in revenue protection orders in the past.

22. In view of time constraints, the Chairman invited members to raise their concerns about the Order such that the Administration would be able to provide a consolidated response at the next meeting.

24. Mr LEE Cheuk-yan asked whether it was consistent with the purpose of protecting public revenue to include in the Order and the Bill provisions for repealing Cross-Harbour Tunnel Ordinance (Cap. 203) (clause 46) and Cross-Harbour Tunnel (Passage Tax) Ordinance (Cap. 274) (clause 47) and the empowering provision for making regulation for consequential amendments, etc (clause 48).

25. Mr Albert HO requested the Administration to advise, as a general principle, whether it would amount to a breach of the human rights provisions of the Basic Law and the provisions of the Hong Kong Bill of Rights Ordinance (Cap. 383) to provide for retrospectivity of criminal sanctions. He was concerned that the Order provided for increases in fixed penalties for

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traffic-related offences before the passage of the Revenue Bill 1999 by the LegCo.

25. Mr Andrew WONG sought clarification on whether the Administration intended to include all revenue proposals for a financial year in a combination bill and introduce a revenue bill before an appropriation bill or combining these two into one bill for the scrutiny of LegCo in future.

Admin.

26. S for Tsy agreed to provide written response to members' concerns. Members agreed to hold the next meeting on 26 April 1999 at 8:30 am.

II Any other business

27. There being no other business, the meeting ended at 10:40 am.

Legislative Council Secretariat
8 November 1999