

**Note on the deliberations of the Bills Committee on Revenue Bill 1999
in respect of the Public Revenue Protection (Revenue) Order 1999
(as at 26 April 1999)**

Background

The Public Revenue Protection (Revenue) Order 1999 (the Order) is made under section 2 of the Public Revenue Protection Ordinance (Cap. 120) (“the Ordinance”). This is a temporary measure to give effect to most of the revenue proposals in the 1999-2000 Budget. The Order has come into force on 1 April 1999 and shall cease to be in force under the specified events in section 5(2) of the Ordinance, among which the expiration of four months from the day on which the Order came into force.

2. The House Committee agreed on 16 April 1999 to form a Subcommittee to study the Order. The House Committee also agreed that after the introduction of the Revenue Bill 1999 which gives long-term effect to the revenue proposals, the Subcommittee shall become the Bills Committee on Revenue Bill 1999.

3. The Bills Committee has just started its scrutiny work. To facilitate members’ consideration of the Order the scrutiny period of which will expire by 5 May 1999, this note reports on the deliberations of the Bills Committee on issues relating to matters of principles in respect of the making of the Order only. The contents of the Order which include all the provisions of the Revenue Bill 1999 are being considered by the Bills Committee. A report will be submitted to the House Committee after the Bills Committee has completed the scrutiny work.

Deliberations of the Bills Committee

4. The long title of the Ordinance states that the Ordinance is to protect the revenue of Hong Kong. Members note that when the Bill was first introduced into the Legislative Council in 1927, the then Attorney General said that the Bill was “ to protect the community against the acts of individuals who would otherwise be able to avoid the payment of duties and other taxation which the community, through its legislature, intended they should pay.” The purpose of the Ordinance was affirmed by the then Attorney General at the Second Reading debate of the Public Revenue Protection (Amendment) Bill 1974 in December 1974 when he assured the Legislative Council that “the Ordinance will not be used except for its true purpose of protecting the revenue”. Some members are of the view that the Order is not consistent with the legislative intent of the Ordinance and has violated the assurance given by the Administration in 1974. They have raised the following questions of principles about the Order -

I. *Whether it is proper to include in the Order revenue concessions which do not serve the purpose of protecting public revenue.*

5. The Administration's explanations are that section 2 of the Ordinance explicitly covers changes to duty, tax, fee, rate or items of revenue. Section 2 says "If the Chief Executive 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;.....the Chief Executive 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." According to the Administration, the word "alter" means change, which includes either increase or decrease. As such, the Ordinance allows a public revenue protection order made under it to cover both revenue raising measures and revenue concessions.

II. *Whether it is proper to include in the Order revenue proposals which do not take effect on 1 April 1999.*

6. The Administration's explanation is that it has no choice but to include in the Order all the provisions of the Revenue Bill 1999 because an order made under section 2 of the Ordinance has to give "full force and effect of law to **all** the provisions of the bill" so long as such order remains in force. The Administration reckons that the existing wording of section 2 is too rigid and leaves no room for flexibility. The Administration intends to amend this section in the future to the effect that an order made under it may include **any** provisions of the bill.

III. *Whether it is proper to include in the Order proposals to increase fixed penalties for traffic-related offences.*

7. According to the Administration, "any moneys raised or received for the purposes of the Government shall form part of the general revenue" as provided for under section 3 of the Public Finance Ordinance (Cap. 2). Section 17A of the same Ordinance provides that fines and penalties "shall be paid into the general revenue of Hong Kong". Fines and penalties form part of the public revenue and fall within the description of "other items of revenue" in section 2 of the Public Revenue Protection Ordinance. To support its view, the Administration has quoted the making of the Public Revenue Protection (Business Registration) Order 1975 under which the penalties for non-payment of business registration fees were increased. The then Legislative Council had not queried this Order.

8. Some members have serious reservations about the inclusion of penalties in the Order. The fact that the then Legislative Council had not objected the 1975 Order could not in itself be taken to mean that the making of it was within the scope of

section 2 of the Public Revenue Protection Ordinance or that it was consistent with the spirit of the Ordinance. Members note the advice of the Legal Service Division of the Legislative Council Secretariat that a distinction must be made between penalties of a civil nature (as in the 1975 Order) and those of a criminal nature (as in the present order). Moreover, if penalties are intended to be an item of revenue, they should have been covered by section 3 of the Public Finance Ordinance and section 17A is superfluous. The enactment of section 17A is evident that fines and penalties do not form part of the public revenue and there is thus a need to spell out the accounting arrangement as to where they should be paid.

9. The Bills Committee notes the advice of the Legal Service Division that under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1), the Legislative Council may amend subsidiary legislation tabled in the Council in any manner whatsoever consistent with the power to make such subsidiary legislation. Section 2 of the Public Revenue Protection Ordinance confers on the Chief Executive the power to make or not to make a public revenue protection order. Hence, the Legislative Council may only pass a resolution under section 34(2) of Cap. 1 to repeal but not to vary or add to the Order.

Legislative Council Secretariat
30 April 1999