

**President's Ruling on the
Proposed resolutions under section 34(2)
Of the Interpretation and General Clauses Ordinance (Cap 1)
To amend the Public Revenue Protection (Revenue) Order 1999**

On 30 March 1999, the Chief Executive in Council made the Public Revenue Protection (Revenue) Order 1999 under section 2 of the Public Revenue Protection Ordinance (Cap 120). The Order was gazetted the same day and laid on the table of the Legislative Council on 31 March 1999. Set out in the Schedule to the Order was a bill to amend certain ordinances to give effect to the revenue proposals in the Budget for the 1999-2000 financial year. The Order came into operation on 1 April 1999.

2. Section 2 of the Public Revenue Protection Ordinance provides that –

“ 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.” (The term “the Governor” is construed as meaning “the Chief Executive”.)

3. The Order is a temporary measure. Under section 5 (2) of the Ordinance, it will expire and cease to be in force upon the –

- (a) notification in the Gazette of the rejection by the Legislative Council of the bill in respect of which the order was made;
- (b) notification in the Gazette of the withdrawal of the bill or order; the Bill, with or without modification, becoming law in the

ordinary manner; or

- (c) the expiration of 4 months from the day on which the order came into force,

whichever event first happens.

4. An order made under section 2 of the Public Revenue Protection Ordinance is subsidiary legislation which is subject to the provisions of section 34 of the Interpretation and General Clauses Ordinance (Cap 1).

5. Later, on 21 April 1999, the same bill set out in the Order, entitled Revenue Bill 1999, was introduced intact into the Legislative Council. It is now being studied by a Bills Committee of the Council.

Hon Albert HO's proposed resolutions

6. Hon Albert HO Chun-yan has given notice of his intention to move four proposed resolutions which seek to amend, by way of repeal, certain provisions in the bill scheduled to the Order.

7. Mr HO's first proposed resolution seeks to repeal those clauses of the bill scheduled to the Order which relate to the Betting Duty Ordinance. The intention of these clauses is to increase the duty on exotic bets with effect from 1 September 1999.

8. The second proposed resolution seeks to repeal those clauses of the same bill which relate to the Fixed Penalty (Traffic Contraventions) Ordinance and the Fixed Penalty (Criminal Proceedings) Ordinance. The intention of these clauses is to increase the fixed penalties provided in the Ordinances with effect from 1 August 1999.

9. The third proposed resolution seeks to repeal those clauses of the same bill which relate to the Cross-Harbour Tunnel. The intention of these provisions is to increase the tolls for the use of the Cross-Harbour Tunnel with effect from 1 September 1999.

10. The fourth proposed resolution seeks to repeal clause 43 of the same bill relating to the Road Traffic (Parking) Regulations. The clause increases the fees for the use of metered parking spaces with effect from 1 April 1999.

The Administration's grounds of objection

11. The Secretary for the Treasury has put forward three grounds of objection: that the resolutions have a charging effect within the meaning of Rule 31 of the Council's Rules of Procedure; that the resolutions anticipate Revenue Bill 1999 which is now being studied by the Council and will be fully debated in Council in due course; and that the Legislative Council does not have the power to amend the Order in the manner sought by Mr HO's proposed resolutions.

12. Because the question of whether the Legislative Council has the power to amend the Order in the manner proposed by Mr HO is of primary importance, I have directed my main attention to the consideration of this aspect. I have considered Mr HO's response to the Administration's arguments, as well as the views of Counsel to the Legislature which lend support to the Administration's claim in regard to the Council's power to amend the Order.

Views of Counsel to the Legislature

13. Counsel to the Legislature has advised that under section 34 (2) of Cap 1, the Legislative Council may amend an item of subsidiary legislation (the Order in this case) "in any manner whatsoever consistent with the power to make such subsidiary legislation". In a normal case where the Legislative Council is seeking to amend a piece of subsidiary legislation under section 34(2) of Cap 1, as long as the proposed amendment conforms with requirements of the Rules of Procedure, the Legislative Council would be able to amend by way of repeal, addition or variation of the subsidiary legislation in question. However, because of the requirement in section 34(2) of Cap 1 that an amendment to a piece of subsidiary legislation can only be made consistent with the power to make the subsidiary legislation in question, the true extent of the Legislative Council's power to amend the Order has to be examined in the context of the Public Revenue Protection Ordinance. Under section 2 of the Ordinance, if the Chief Executive has approved of the introduction into the Legislative Council of a bill which would provide the legal basis for achieving any of the revenue measures provided in section 2(a) to (c) of the Ordinance, he will have a discretion to decide whether to make an order to give "full force and effect of law to all the provisions of the bill". In other words, if the Chief Executive decides to make an order, he will have no choice but to include in the order all the provisions of the bill. Since the Legislative Council's power to amend the order has to be consistent with the power of the Chief Executive to make the order, its power is limited to either

to make or not to make the order in its entirety. Practically speaking, the Legislative Council, in exercising its power under section 34(2) of Cap 1, does not have the power to amend individual provisions in the order.

Hon Albert HO's response to the Administration's objection

14. Mr HO argues that the proper reading of section 2 of the Public Revenue Protection Ordinance is that it grants the Chief Executive the discretionary power to put into effect all the revenue-related provisions in a bill; it does not require that all such provisions be put into effect, but merely gives the Chief Executive this power over all of the bill's revenue provisions. The Legislative Council has the power to amend the individual provisions in the Order, and section 6 of the Ordinance clearly envisages that the order of the Chief Executive is reversible by the Legislative Council. Section 6 provides that "So much of any duty, tax, fee, rate or other item of revenue as may have been paid under any order made under this Ordinance in excess of the respective duty, tax, fee, rate or other item of revenue payable immediately after expiration of the order shall be repaid to the person who paid the same."

Discussion

15. The purpose of the Public Revenue Protection Ordinance is to protect the Government from loss of revenue during the period when long-term proposals for increases in duty, tax, fees, rates and other items of revenue are being considered by the Council. It is clear that any order made under the Ordinance should be intended to be a provisional and temporary measure (lasting for a maximum period of four months only) for preventing the avoidance of payment. An order made under the Public Revenue Protection Ordinance should be distinguished from bills and resolutions which seek to bring in long-term revenue proposals for the Council's consideration. I realize that there have been discussions between the Administration and Members about the merits of including in the present Order, by way of an unprecedented omnibus bill in its Schedule, provisions that relate to tax concessions, fines, and some revenue proposals that will not take effect until after the expiry of the Order. Some Members doubt whether the Public Revenue Protection Ordinance is being used for its true purpose of protecting Government's revenue. I note that the Administration is reported as having conceded to the House Committee's Subcommittee which studied the Order that the existing wording of section 2 is too rigid and leaves no room for flexibility, and the Administration intends to amend the section in the future to the effect that an order need not include all the provisions in a revenue bill.

16. However, these discussions and development do not detract from the legal position of section 2 of the Ordinance, which is that the Chief Executive is empowered to make an order to give “full force and effect of law to all the provisions in the bill” the introduction of which he has approved of. Because the Chief Executive, unlike in previous years, has approved of the introduction of only one omnibus bill containing the revenue proposals, he is obliged under section 2 to include in the Order all the provisions of the bill. To be consistent with the power of the Chief Executive to make the Order, the Legislative Council’s power to amend the Order under section 34(2) of Cap 1 is therefore limited to repealing the Order where it considers appropriate.

Ruling

17. Having considered the arguments put forth by the Secretary for the Treasury and Mr HO, and taking into account the views of Counsel to the Legislature, I rule that Mr HO may not move the proposed resolutions as they fall outside the power of the Legislative Council to amend the Order under section 34(2) of Cap 1.

18. As I have ruled that the Council has no power to amend the Order in the manner proposed by Mr HO, I do not feel that any useful purpose would be served by my consideration of the Administration’s two other grounds of objections in this context. These issues should be considered when the need arises.

(Mrs Rita FAN)
President
Legislative Council

3 May 1999