

**President's ruling on
Hon LAU Chin-shek's proposed resolution under section 34(2) of the
Interpretation and General Clauses Ordinance (Cap 1) to amend the
Public Revenue Protection (Revenue) Order 2001**

Introduction

On 7 March 2001, the Chief Executive in Council made the Public Revenue Protection (Revenue) Order 2001 (the Order) under section 2 of the Public Revenue Protection Ordinance (Cap 120). In accordance with section 34(1) of the Interpretation and General Clauses Ordinance (Cap 1) (Cap 1 Ordinance), after the Order was published in the Gazette on the same day, it was laid on the table of the Legislative Council on 14 March 2001. 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 2001-2002 financial year, namely:

- (a) to increase from 30% to 40% the current ad valorem rate of the duty on alcoholic liquor (except wine) with an alcoholic strength not more than 30%;
- (b) to increase the duty on tobacco by 5%; and
- (c) to increase by 10% the vehicle licence fees for private cars, motor cycles and motor tricycles, and all driving licence fees.

The Order came into operation at 2.30 pm on 7 March 2001.

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

"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; 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 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."

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

- (a) the notification in the Gazette of the rejection by the Legislative Council of the bill in respect of which the Order was made; or
- (b) notification in the Gazette of the withdrawal of the bill or Order; or
- (c) the bill, with or without modification, becoming law in the ordinary manner; or
- (d) the expiration of 4 months from the day on which the Order came into force,

whichever event first happens.

4. On 21 March 2001, the Secretary for the Treasury advised the Legislative Council Secretariat of her intention to introduce two bills: Revenue Bill 2001 and Revenue (No. 2) Bill 2001, at the Council meeting to be held on 25 April 2001. The contents of the Revenue Bill 2001 which will be gazetted on 6 April are identical to the bill set out in the Schedule to the Order.

Hon LAU Chin-shek's proposed resolution

5. Hon LAU Chin-shek's proposed resolution is made under section 34(2) of the Cap 1 Ordinance. It seeks to repeal the Order. If it is passed, the practical effect is that Government will revert to charging the previous rates of duties and fees from the date the resolution is published in the Gazette.

The Administration's views

6. The Secretary for the Treasury is of the views that the proposed resolution would have the effect of disposing of or charging the revenue of Hong Kong within the meaning of Rule 31(1) of the Rules of Procedures, and that it anticipates the Council's future debate on the Government's revenue proposals in the Revenue Bill.

Charging effect

7. Rule 31(1) provides that:

"A motion or amendment, the object or effect of which may, in the opinion of the President or Chairman, 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."

8. According to the Secretary, the word "revenue" is not restricted to income that has already been received or accrued due. The concept of "revenue" has within it a clear meaning of prospective income rather than what has been received or accrued in the past. So, the increased revenue anticipated to be collected from the public may properly be regarded as the "revenue of Hong Kong" even though it may not as yet have accrued due. Furthermore, since the Chief Executive's Order authorizes the Government to collect, with effect from 2.30 pm on 7 March 2001, the additional revenue arising from the revenue proposals, Mr LAU's proposal to repeal the Order will reduce the Government's revenue.

9. The Secretary further states that a former President of the Council had, in May 1994, ruled against the amendments proposed by two Members to the Government's motion amending the Rating Ordinance to give effect to the rates measures in the 1994 Budget, for reason that the Members' amendments would reduce Government's revenue and hence had a charging effect. The Secretary contends that, in the present case, the claim of the Government is stronger because it has already been authorized to collect, as from 7 March 2001, the additional revenue by virtue of the Order.

Anticipation of debate on Revenue Bill 2001

10. The Secretary states that the debate on the revenue proposals of the 2001-2002 Budget, contained in the Revenue Bill 2001 to be introduced into the Council, should not be anticipated in the context of the Order. The Secretary also states that the purpose of the Order is merely to protect the revenue by provisional amendment of revenue legislation. If the Revenue Bill 2001 does not become law in all respects, section 6 of the Public Revenue Protection Ordinance provides for the refund of any excess paid under the Order. As such, the proposed repeal of the Order is clearly premature and

inconsistent with the Ordinance.

Response from Hon LAU Chin-shek

11. Mr LAU Chin-shek disagrees and contends that if all revenue increases anticipated to be collected, as announced by the Financial Secretary in his Budget Speech, were regarded as the "revenue" in the context of Rule 31(1), it would result in Members being also barred from moving amendments to the relevant Revenue Bill at its Committee Stage, or to any Government resolution seeking to give effect to the revenue proposals. Even though the Government has been authorized to collect, temporarily, the additional revenue with effect from 7 March 2001 under the Order, Members should not be barred from proposing to amend the Order, which Members are empowered to do by virtue of section 34(2) of the Cap 1 Ordinance.

12. Mr LAU also states that the Order and the Revenue Bill 2001 serve different purposes and that the Order is not subsidiary legislation of the Revenue Bill 2001. The claim by the Secretary that the proposed resolution anticipates the debate on the Revenue Bill is therefore unfounded.

Advice of Counsel to the Legislature

13. Counsel to the Legislature advises that as a matter of general principle, the "charging effect" restriction provided in Rule 31(1) of the Rules of Procedure applies to revenue which may be collected under statutory authority. In view of the fact the Public Revenue Protection (Revenue) Order 2001 is subsidiary legislation, a repeal of the Order would not reduce the amount of revenue collectable before the provisional and temporary measures came into effect and as such should not be held to have charging effect within the meaning of Rule 31(1).

14. Rule 31(2) of the Rules of Procedure does not apply to the two matters under consideration because the subject matter of the proposed resolution to repeal the Public Revenue Protection (Revenue) Order 2001 is different from that in relation to proceedings on the Revenue Bill 2001. Moreover, according to the Committee on Rules of Procedure, for the purpose of applying the rule of anticipation, motions intended to have legislative effect are equally effective as bills.

My opinion

15. 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 Cap 1 Ordinance, which also empowers the Legislative Council to amend it. The exercise of this power is subject to the restrictions provided in Rule 31(1) of the Rules of Procedure.

16. The claim by the Secretary, that Mr LAU Chin-shek's proposed resolution is caught by Rule 31(1), seems to have been based on the premise that since the Order made by the Chief Executive already authorizes the collection of the increased duties and fees proposed, albeit temporarily and subject to the passage of the Revenue Bill 2001 by the Council, the money collected and the prospective money to be collected during the period in which the Order is in force is the "revenue" of Hong Kong. In my opinion, the argument does not stand. Apart from the fact that as subsidiary legislation, the Order is subject to repeal by resolution of the Legislative Council, section 6 of the Public Revenue Protection Ordinance provides for the refund of any excess paid under the Order. Whether such money collected can become the revenue of the Government is subject to the passage of the relevant bill or resolution by the Council.

17. My opinion in this regard is also founded on the statement made by the then Attorney General when he introduced the Public Revenue Protection Bill in 1927:

"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, then the former position is restored and any duty paid in excess is refunded."

18. The "ruling" by a former President of the then Legislative Council in May 1994, which the Secretary has referred to, is but two identical letters sent by the President to the two Members conveying his decision. They have not enlightened me on the rationale for that decision. However, having dug out and read the relevant file, I conclude that the nature and the legislative framework of the Government motion which the two Members sought to amend are different from those of the Order which Mr LAU now seeks to repeal. As such, my decision in respect of this proposed resolution need not necessarily be the same as that of the former President.

19. As regards the Secretary's claim that the proposed resolution anticipates the debate on the revenue proposals of the Revenue Bill 2001 to be introduced into the Council, it should be noted that Rules 32(2) of the Rules of Procedure imposes a restriction only on motions with no legislative effect vis-à-vis those with such effect for debate in the Council. The question of anticipation under Rule 32(2) does not arise in this case, not just because the proposed resolution is intended to have legislative effect, but also because the subject matter of the proposed resolution to amend the Order by way of repeal is quite distinct from that of the future debate by the Council on the Revenue Bill 2001. By the Secretary's own admission, the purpose of the Order is merely to protect the revenue by provisional amendment of revenue legislation.

My ruling

20. For the reasons stated above, I rule that Mr LAU Chin-shek's proposed resolution to amend the Public Revenue Protection (Revenue) Order 2001 does not have the object or effect of disposing of or charging the revenue of Hong Kong; neither does it anticipate the debate on the Revenue Bill 2001.

(Mrs Rita FAN)
President
Legislative Council

27 March 2001