

**2015年3月24日會議
資料文件**

**研究於2015年2月18日刊登憲報的
《競爭條例》下的4條附屬法例小組委員會**

**對2015年3月16日會議席上
提出的跟進問題的回應**

目的

在2015年3月16日的會議席上，委員就《競爭(營業額)規例》(“《規例》”)第2條提問。本文件現回應委員的提問。

有關“日常活動”的說明

2. 政府於2015年3月13日的覆函(立法會文件編號CB(4)640/14-15(02))中說明，就《規例》第2條所使用的“日常活動”一詞，是會計行業熟悉的概念，並普遍應用於審計帳目。就《規例》而言，參照《第18號會計準則》(“《第18號準則》”)，從“日常活動”所產生的收入除指從銷售商品、提供服務所獲得的收益外，也包括他人使用實體的資產而產生的利息、使用費和股息的收益。

3. 至於物業和外幣的交易，以及分派花紅或股息，是否亦會視作“日常活動”，這要視乎業務實體的業務性質而定。例如某業務實體的業務包括購買物業作轉售用途，該些交易將被視為商品的銷售，而有關的收入將視作從“日常活動”所產生的。與此相類，假如某業務實體的業務包括投資股本以賺取股息，則一般而言該些股息收入將視作從“日常活動”所產生的。

4. 再參照《第18號準則》，不被視為從“日常活動”產生的收入的例子包括股東注資，及代理人代供應商收取的金額。

香港會計準則的地位

5. 《香港會計準則》(“《香港準則》”)是香港會計師公會(“會計師公會”)根據《專業會計師條例》(第50章)(“《會計師條例》”)第18A條發出的。《會計師條例》第18A條訂明，任何會計師均須遵守、維持或以其他方式應用由會計師公會發出的會計準則。再者，根據《公司條例》(第622章)第380條，某公司關乎某財政年度的財務報表，必須符合適用於該財務報表的會計準則。

6. 為使《規例》能更明確參照會計準則，我們會考慮在《規例》第2條下新添一款以說明在該條文下，業務實體的營業額，即它的總收入，須按照普遍接納的會計原則計算。加進新條文可清楚說明就《規例》而言，《香港準則》(包括《第18號準則》)的原則適用於計算該些應用香港會計準則的業務實體的營業額，香港以外的業務實體的營業額也可按相應的會計準則計算。

7. 若加入上文第6段所述的新條文，我們認為無須為某些業務實體例如“信貸機構”、“金融機構”及“保險業務實體”訂立特定條文。我們2015年3月13日的覆函中已解釋，《第18號準則》包括一系列示例說明各種服務的收入應如何確認為收入。《第18號準則》內的有關例子現載於附件以供參考。

供釐定罰款的營業額

8. 《競爭條例》《“條例”》第93條訂明，因違反競爭守則而可能施加的罰款上限根據業務實體的營業額釐定，為不多於業務實體在香港境內得到的總收入的百分之十，及不多於三年。有關規定是參考新加坡的競爭法例而制定的。正如政府在提交予經濟發展事務委員會2014年11月24日會議的文件(立法會文件編號CB(4)166/14-15(03))所述，在香港境內得到的營業額實際上包括業務實體向香港顧客所作的銷售，以及從香港境內所作的出口銷售，這亦是新加坡的做法。

“銷售回贈”及“與收入直接有關的稅項”

9. 《規例》有關“銷售回贈”及“與收入直接有關的稅項”的用語參考自海外相關的競爭法，包括英國《2000年〈1998年競爭法〉(釐定計算罰款的營業額)令》(Competition Act

1998 (Determination of Turnover for Penalties) Order 2000)，當中使用了“但須減除銷售回贈、增值稅和與營業額直接有關的其他稅項”的字句。同樣地，新加坡《2007年競爭(罰款)令》(Competition (Financial Penalties) Order 2007)則使用了“但須減除銷售回贈、商品及服務稅和與營業額直接有關的其他稅項”的字句。依循海外的經驗，我們認為無須在《規例》之中進一步界定何為“銷售回贈”和“與收入直接有關的稅項”。

“款額”是否同時包括金錢上和非金錢上的報酬

10. 《規例》使用“款額”一詞，依據普遍接納的會計原則並不代表不計算非金錢形式的收入。為此，我們將考慮《規例》第 2(3)(a)條中提及“補助金、津貼或相類似資助形式”時，須否保留“任何款項”一詞。

競爭事務委會將會發出的指引

11. 政府在制訂《規例》時曾與競爭事務委員會(“競委會”)商議。雖然《規例》制訂時已參考《香港準則》和其他有實施競爭法的司法管轄區普遍採用的概念，但是競委會仍擬就如何評估營業額，提供進一步指引。《條例》第 131 條訂明，競委會覺得對執行其職能(或在與執行其職能有關連的情況下)屬必要、有利或合宜的一切事情，競委會均可予辦理。除了《條例》特別訂明的指引外，競委會亦會公布包括參考指引在內的文件以助執行《條例》，其中包括如何評估營業額的指引。據我們了解，競委會在制訂評估營業額的指引時，將依據《條例》及《規例》的意向和規定，以及參考現行會計原則和海外競爭司法管轄區的經驗，競委會亦將以事例說明如何從業務實體常見的審計帳目表中估算營業額。

商務及經濟發展局
二零一五年三月

Rendering of services

10 *Installation fees.*

Installation fees are recognised as revenue by reference to the stage of completion of the installation, unless they are incidental to the sale of a product in which case they are recognised when the goods are sold.

11 *Servicing fees included in the price of the product.*

When the selling price of a product includes an identifiable amount for subsequent servicing (for example, after sales support and product enhancement on the sale of software), that amount is deferred and recognised as revenue over the period during which the service is performed. The amount deferred is that which will cover the expected costs of the services under the agreement, together with a reasonable profit on those services.

12 *Advertising commissions.*

Media commissions are recognised when the related advertisement or commercial appears before the public. Production commissions are recognised by reference to the stage of completion of the project.

13 *Insurance agency commissions.*

Insurance agency commissions received or receivable which do not require the agent to render further service are recognised as revenue by the agent on the effective commencement or renewal dates of the related policies. However, when it is probable that the agent will be required to render further services during the life of the policy, the commission, or part thereof, is deferred and recognised as revenue over the period during which the policy is in force.

14 *Financial service fees.*

The recognition of revenue for financial service fees depends on the purposes for which the fees are assessed and the basis of accounting for any associated financial instrument. The description of fees for financial services may not be indicative of the nature and substance of the services provided. Therefore, it is necessary to distinguish between fees that are an integral part of the effective interest rate of a financial instrument, fees that are earned as services are provided, and fees that are earned on the execution of a significant act.

(a) *Fees that are an integral part of the effective interest rate of a financial instrument.*

Such fees are generally treated as an adjustment to the effective interest rate. However, when the financial instrument is measured at fair value with the change in fair value recognised in profit or loss, the fees are recognised as revenue when the instrument is initially recognised.

(i) *Origination fees received by the entity relating to the creation or acquisition of a financial asset other than one that under IAS 39 is classified as a financial asset at 'fair value through profit or loss'.*

Such fees may include compensation for activities such as evaluating the borrower's financial condition, evaluating and recording guarantees, collateral and other security arrangements, negotiating the terms of the instrument, preparing and processing documents and closing the transaction. These fees are an integral part of generating an involvement with the resulting financial instrument and, together with the related transaction costs (as defined in IAS 39), are deferred and recognised as an adjustment to the effective interest rate.

- (ii) *Commitment fees received by the entity to originate a loan when the loan commitment is outside the scope of IAS 39.*

If it is probable that the entity will enter into a specific lending arrangement and the loan commitment is not within the scope of IAS 39, the commitment fee received is regarded as compensation for an ongoing involvement with the acquisition of a financial instrument and, together with the related transaction costs (as defined in IAS 39), is deferred and recognised as an adjustment to the effective interest rate. If the commitment expires without the entity making the loan, the fee is recognised as revenue on expiry. Loan commitments that are within the scope of IAS 39 are accounted for as derivatives and measured at fair value.

- (iii) *Origination fees received on issuing financial liabilities measured at amortised cost.*

These fees are an integral part of generating an involvement with a financial liability. When a financial liability is not classified as 'at fair value through profit or loss', the origination fees received are included, with the related transaction costs (as defined in IAS 39) incurred, in the initial carrying amount of the financial liability and recognised as an adjustment to the effective interest rate. An entity distinguishes fees and costs that are an integral part of the effective interest rate for the financial liability from origination fees and transaction costs relating to the right to provide services, such as investment management services.

- (b) *Fees earned as services are provided.*

- (i) *Fees charged for servicing a loan.*

Fees charged by an entity for servicing a loan are recognised as revenue as the services are provided.

- (ii) *Commitment fees to originate a loan when the loan commitment is outside the scope of IAS 39.*

If it is unlikely that a specific lending arrangement will be entered into and the loan commitment is outside the scope of IAS 39, the commitment fee is recognised as revenue on a time proportion basis over the commitment period. Loan commitments that are within the scope of IAS 39 are accounted for as derivatives and measured at fair value.

- (iii) *Investment management fees.*

Fees charged for managing investments are recognised as revenue as the services are provided.

* In *Improvements to IFRSs* issued in May 2008, the Board replaced the term 'direct costs' with 'transaction costs' as defined in paragraph 9 of IAS 39. This amendment removed an inconsistency for costs incurred in originating financial assets and liabilities that should be deferred and recognised as an adjustment to the underlying effective interest rate. 'Direct costs', as previously defined, did not require such costs to be incremental.

Incremental costs that are directly attributable to securing an investment management contract are recognised as an asset if they can be identified separately and measured reliably and if it is probable that they will be recovered. As in IAS 39, an incremental cost is one that would not have been incurred if the entity had not secured the investment management contract. The asset represents the entity's contractual right to benefit from providing investment management services, and is amortised as the entity recognises the related revenue. If the entity has a portfolio of investment management contracts, it may assess their recoverability on a portfolio basis.

Some financial services contracts involve both the origination of one or more financial instruments and the provision of investment management services. An example is a long-term monthly saving contract linked to the management of a pool of equity securities. The provider of the contract distinguishes the transaction costs relating to the origination of the financial instrument from the costs of securing the right to provide investment management services.

(c) *Fees that are earned on the execution of a significant act.*

The fees are recognised as revenue when the significant act has been completed, as in the examples below.

(i) *Commission on the allotment of shares to a client.*

The commission is recognised as revenue when the shares have been allotted.

(ii) *Placement fees for arranging a loan between a borrower and an investor.*

The fee is recognised as revenue when the loan has been arranged.

(iii) *Loan syndication fees.*

A syndication fee received by an entity that arranges a loan and retains no part of the loan package for itself (or retains a part at the same effective interest rate for comparable risk as other participants) is compensation for the service of syndication. Such a fee is recognised as revenue when the syndication has been completed.

15 *Admission fees.*

Revenue from artistic performances, banquets and other special events is recognised when the event takes place. When a subscription to a number of events is sold, the fee is allocated to each event on a basis which reflects the extent to which services are performed at each event.

16 *Tuition fees.*

Revenue is recognised over the period of instruction.

17 *Initiation, entrance and membership fees.*

Revenue recognition depends on the nature of the services provided. If the fee permits only membership, and all other services or products are paid for separately, or if there is a separate annual subscription, the fee is recognised as revenue when no significant uncertainty as to its collectibility exists. If the fee entitles the member to services or publications to be provided during the membership period, or to purchase goods or services at prices lower than those charged to non-members, it is recognised on a basis that reflects the timing, nature and value of the benefits provided.

18 *Franchise fees.*

Franchise fees may cover the supply of initial and subsequent services, equipment and other tangible assets, and know-how. Accordingly, franchise fees are recognised as revenue on a basis that reflects the purpose for which the fees were charged. The following methods of franchise fee recognition are appropriate: