Criteria for approval of Executive Orders

The following criteria should be used as a guide to determine whether proposals submitted for additional funding through the Executive Order process should be approved:

1. *Is the expense unforeseen?* Any expense that could (or should) have reasonably been foreseen should not be approved.
    a. *Does the expense represent 'business as usual'?* If the expense is something that is considered to be normal operational spending (including personnel), the ability of the ministry in question to manage their budget is in question, and the funding should not generally be approved.
    b. *Is the expense something 'demand-driven' and outside the control of the ministry?* If the expense is for something outside the control of the ministry, this is generally more likely to be approved. However, care should be taken in determining if the ministry should have been able to control the particular expenditure.
2. *Have there been offsetting savings proposed?* All new spending proposals should contain offsetting savings to fund them. Ideally, these should match the years of expenditure. If there is no offset, this does not preclude a proposal from being approved, but a strong case needs to be made for diverting future funding away from other priorities in current or future budgets. In the case of Executive Orders, this may involve a reduction in funding in the next year.
3. *Can the expense be delayed until the next Budget?* Preferably, all spending decisions would be made through the budget process, so if a proposal can be held over until then, it should be.
4. *Does the proposal use excess trading revenue?* Expenditure of trading revenue must still be authorised, and there are multiple ways of doing this. The Financial Secretary can authorise trading revenue expenditures within the same output for trading revenue that exceeds that budgeted for, and (s)he can also approve for appropriations to be shifted between existing outputs. As a general rule however, any *new* initiative that is being funded from excess/new trading revenue should be appropriated through a regular Budget or Supplementary process – using Executive Orders for this process reduces the amount available through the constitutional limit.
5. *Does the expense involve a commitment to ongoing funding?* Executive Orders cannot be used as a means for funding government decisions and priorities that involve ongoing funding. Therefore, if a proposal involves ongoing funding, it should not be approved outside of a Budget process.
6. *Is the 1.5 per cent cap under section 70(3)(b)(i) of the constitutional limit in danger of becoming binding if this proposal (and any related proposals) is approved?* If there is a possibility of breaching the constitutional limit on overspending, great care should be taken when approving Executive Orders. Section 70(3)(b)(ii) allows for the Minister of Finance to direct appropriations in the following years to be reduced by any amount granted under 70(3)(b)(i).
7. *Is there an alternative to using an Executive Order?* Executive Orders should be used sparingly, and if there is an alternative such as re-prioritising funding under an appropriation or delaying a purchase, this should be investigated.