

**President's ruling on
Committee Stage Amendments to Chief Executive Election Bill
proposed by Hon Martin LEE Chu-ming, SC, JP**

Hon Martin LEE has given notice to move a total of three sets of amendments to the Chief Executive Election Bill (the Bill) at its Committee Stage, after it has been read the second time at the Council meeting to be held with effect from 11 July 2001. The Secretary for Constitutional Affairs (SCA), who has been invited to offer his comments on the proposed amendments, has submitted the Administration's view that one set of the proposed amendments is beyond the scope of the Bill and has a charging effect, and therefore contravenes Rule 57(4)(a) and (6) of the Council's Rules of Procedure.

2. Rule 57(4)(a) provides that an amendment relating to a bill must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates.

3. Rule 57(6) provides that an 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.

The proposed amendments

4. The set of amendments in question seeks to either delete, substitute or amend 42 of the 82 clauses contained in the Bill, and to delete the Bill's Schedule which governs the constitution of the Election Committee proposed in the Bill for the purpose of electing the Chief Executive (CE). Its apparent purpose is to seek to replace the system proposed in the Bill with another system for electing the CE, with all the registered voters in the geographical constituencies for the Legislative Council elections being made eligible for voting in the election of the CE and for nominating candidates for that election.

The Administration's view

5. SCA states that Article 73(1) of the Basic Law (BL) empowers the Legislative Council to enact, amend or repeal laws in accordance with the BL. Article 11 stipulates that no law enacted by the Council shall contravene the BL. It follows that any Committee Stage amendment (CSA) which is inconsistent with the BL is out of order. Citing Annex I to the BL, which provides that the CE shall be elected by a broadly representative Election Committee which shall be composed of 800 members from four sectors, SCA states that Mr LEE's proposed CSAs contravene the BL.

6. SCA further states that the purpose of the Bill is to give effect to the BL requirements on the selection of the CE, by providing the domestic legal framework for holding the CE election. This is clearly set out in the long title and the Explanatory Memorandum of the Bill, i.e. to "provide for the election of the Chief Executive in accordance with Annex I to the Basic Law of the Hong Kong Special Administrative Region". Mr LEE's proposed CSAs are inconsistent with provisions in Annex I to the BL, and hence fall outside the scope of the Bill.

7. Lastly, SCA states that the proposed CSAs, if passed, would entail substantial public spending, estimated at \$300 million, in order to organize an election involving 3 million registered geographical constituencies voters.

Response from Hon Martin LEE

8. In response to SCA's, Mr LEE has made the following points:
- (a) When deciding whether a CSA is out of order or not, the only consideration applicable is Rule 57 of the LegCo Rules of Procedure. Whether a CSA, if passed, is inconsistent with the Basic Law or not should be a matter for individual LegCo Members.
 - (b) As regards the scope test raised by the Administration, it should be noted that the subject matter of this Bill is to provide for the election of the Chief Executive. Any amendment to provide for the election of the Chief Executive by universal suffrage rather than by an Election Committee is clearly relevant to the subject matter of this Bill.
 - (c) It is not uncommon for a bill to be passed by the LegCo which on the face of it may appear to be inconsistent with certain provisions of the constitutional documents so long as the former does not come into force until after suitable

amendments are made to the latter. For instance, the former Legislative Council passed the Legislative Council (Electoral Provisions) (Amendment) Bill 1994 providing for the election of Members of the Legislative Council in 1995. That Bill was inconsistent with the Letters Patent at that time. But the Letters Patent were subsequently amended in July 1994 and the Bill then came into force.

- (d) The Basic Law is our constitutional document and Article 159 provides for the procedure for amending it. Thus, it is not expected that this Bill will come into force until after the necessary amendments are made to the Basic Law.
- (e) On the point made by the Administration about the charging effect of the proposed CSAs, the President had, in regard to the CSAs proposed by Members to the Legislative Council (Amendment) Bill 1999, stated that "One of the purposes of the Bill relates to the elections of members to form the Council. The expenditure on voter registration, processing applications, free postage, polling and counting etc are all relevant to the elections for forming the Council and, in my opinion, are already authorized by law, irrespective of what the constituencies may be which are to return members of the Council, or of the sizes of these constituencies."
- (f) Mr LEE urged that a liberal approach to his proposed CSAs be adopted, as Article 45 of the Basic Law provides that the ultimate aim is to have the Chief Executive elected by universal suffrage.

Advice of Counsel to the Legislature

9. Counsel to the Legislature advises that the Bill has the clear object of enacting an electoral law for the election of the CE in accordance with the Basic Law by providing those features of the election which are governed by the Basic Law and others which are necessary for the conduct of the election. This object forms the subject matter of the Bill.

10. Under Rule 57(4)(a) of the Rules of Procedure, an amendment must be relevant to the subject matter of the Bill and to the subject matter of the clause to which it relates. Proposed CSAs seeking to remove the key provisions in a bill and to substitute them with provisions of a fundamentally different nature may be considered to be not relevant to the subject matter of the bill.

11. On the submission by SCA that the proposed CSAs contravene the BL, Counsel advises that, in procedural terms under the Rules of Procedure, the key point of the Administration's submission is on the failure of the proposed CSAs to comply with Rule 57(4)(a) rather than the constitutionality of the CSAs. The key features of the electoral system provided by the BL, such as those relating to the functions of the Election Committee, form the fundamental features of the electoral system proposed in this Bill. The proposed CSAs, which seek to substitute that system with a fundamentally different one, are clearly outside the scope of the Bill and are therefore not relevant to the Bill's subject matter.

12. Counsel also advises that, since the election system proposed by the CSAs is fundamentally different from that proposed in the Bill, the argument, that the election expenditure that would be incurred under the proposed CSAs are already authorized by law and therefore do not have a charging effect under Rule 57(6), is not valid.

My opinion

13. In previous rulings, I have stated that, in forming my opinion whether on bills, motions or CSAs proposed by Members, I am bound by the Council's Rules of Procedures. In regard to CSAs, I am only empowered to rule on their admissibility under the Rules. I cannot and will not deal with arguments about the merits of the proposals; these are matters for the wisdom of the Council.

14. In the present case, I shall not deal with Administration's points on the merits of Members' proposed CSAs, or with Mr LEE's plea for a liberal approach (which suggests that there can be an autocratic or conservative approach adopted by the Chair). Neither shall I deal with Mr LEE's point concerning the legislative competence of the Council under the Basic Law vis-à-vis the previous Legislative Council before 1997 which, in my opinion, is not relevant to my consideration of whether or not his proposed CSAs are relevant to and within the scope of the subject matter of the Bill.

15. I take the Administration's point, which is shared by Counsel to the Legislature, that the proposed CSAs are beyond the scope of, and therefore not relevant to the subject matter of the Bill. They also have a charging effect for the purpose of the Rules of Procedure.

Ruling

16. I rule that Mr LEE may not move the proposed CSAs seeking to provide for the election of the CE by universal suffrage, as they contravene Rule 57(4)(a) and (6) of the Rules of Procedure.

(Mrs Rita FAN)
President
Legislative Council

5 July 2001