

CB(3)/B/S/5 (01-02)
2869 9461
2877 9600

3 July 2002
Urgent by Fax: 2501 0724

Hon James TO Kun-sun
Room 601, Citibank Tower
3 Garden Road
Central
Hong Kong

Dear Mr TO

United Nations (Anti-Terrorism Measures) Bill

Thank you for your letter of 28 June 2002 in which you asked me to rule whether or not the notice given by the Secretary for Security to resume the Second Reading debate on the United Nations (Anti-Terrorism Measures) Bill is valid notice.

The notice by the Secretary was given pursuant to Rule 54(5) of the Rules of Procedure. The term of this subrule has been in the Standing Orders and the Rules of Procedure of Hong Kong's legislature for a long time. Its making can be traced back to September 1992 when it was passed by the then Legislative Council.

The Clerk to the Legislative Council advises me that although the term of the subrule provides that the public officer or Member in charge of a bill may give notice to resume its Second Reading debate after consultation with the chairman of the House Committee, due to the constraints imposed by the other provisions in the subrule on resumption of Second Reading debates and the timing on notices, the mode of operation of the subrule since 1992 has not been entirely in accord with the term of the subrule. In normal circumstances, the Secretariat advises the public officer or Member concerned to give notice after the House Committee has received a bills committee's report and has been advised of the proposed date to resume the Second Reading debate on a bill. The Secretariat also consults the chairman of the House Committee on his/her behalf.

In special circumstances, especially at the time towards the end of a session when the examination of bills is not concluded until the last moment and the bills committees are not able to make timely reports to the House Committee, to follow strictly the term of the subrule will render it not possible to resume on time the Second Reading debates on many bills, not to mention their getting passed by the legislature. Hence, the public officer or Member concerned normally gives, in advance, the longest possible notice stipulated in Rule 54, i.e. 12 clear days, and then, after the House Committee has received the bills committee's report, consults the chairman of the House Committee through the Secretariat.

The Clerk also advises me that, all along, Members have not raised objections to the above mode of operation which has avoided the effective operation of the Legislature from being excessively fettered by the term of the subrule. In fact, if the majority of the members of the House Committee oppose the premature resumption of the Second Reading debate on a bill, the public officer or the Member concerned needs to consider whether or not to withdraw the notice and consult Members further. If he/she is bent on having his/her own way, he/she will bear the risk of the bill's Second Reading debate being adjourned by the legislature through the passage of a motion under Rule 40 of the Rules of Procedure, or of the bill being voted down by the legislature.

As the legislature has all along raised no objections to the mode of operating Rule 54(5) since it was made, I am of the view that, in regard to this bill, the notice given by the Secretary for Security in accordance with the usual practice should not be regarded as not valid. Otherwise, four other notices given by public officers, in accordance with the same practice, to resume the Second Reading debates on four bills at the Council's last meeting in this session (i.e. 10 July), should also all be regarded as not valid. I do not think this is what Members like to see happen.

Whilst I do not think that the Secretary's notice should be regarded as not valid, on the basis of the fact that Members have all along not raised objections to the mode of operating the subrule, since there is discrepancy between the term of the subrule and the practice which the legislature has for many years accepted, I suggest Members should consider, as soon as possible, whether or not the subrule should be amended to clearly give effect, in the Rules of Procedure, to the practice to which Members have all along not objected. I have therefore asked the Clerk to invite the Committee on Rules of Procedure to consider the matter.

Yours sincerely

(Mrs Rita FAN)
President
Legislative Council