

立法會

Legislative Council

LC Paper No. LS78/06-07

Bills Committee on Rail Merger Bill

Procedural issues related to the long title of a bill

Purpose

This paper sets out the nature of and the procedural issues related to the long title of a bill.

Nature of the long title of a bill

2. The long title of a bill appears at the beginning of the bill. It sets out in general terms the purposes of the bill, and should cover everything in the bill.¹ The long title begins with the words “A Bill to ...”. It has been suggested by academics that the long title owes its presence to the procedural rules governing parliamentary Bills. The long title is regarded as a parliamentary device, whose purpose is in relation to the Bill and its parliamentary progress.² In the case of amendment bills which seek to amend ordinances already enacted, the drafting convention used in Hong Kong is such that the long titles of amendment bills do not appear in the loose-leaf edition of the ordinances as amended in the Laws of Hong Kong.³ The Rail Merger Bill, despite its short title, is in effect an amendment bill which seeks to amend primarily the Mass Transit Railway Ordinance (Cap. 556) (MTRO) and the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) (KCRCO). This may explain why the long titles of MTRO and KCRCO are proposed to be amended. When the Rail Merger Bill is enacted, its long title will not appear anywhere in the amended MTRO and KCRCO.

¹ Francis Bennion, *Statutory Interpretation*, Fourth edition, at 620; Erskine May, *Parliamentary Practice*, Twenty-third edition, at 535; Robert Marleau and Camille Montpetit, *House of Commons Procedure and Practice* (Canada), 2000, at 621.

² Bennion, n 1 above, at 620.

³ In some jurisdictions where amendments to an existing Act are effected by way of a self-contained bill instead of an amendment bill, the long title of the self-contained bill will appear in the Act when the bill for the Act was passed by the legislature.

3. It has been suggested by legal academics that the long title of a bill may be relevant to the consideration of the scope of the bill in the legislature to the effect that an amendment to the bill would be out of order if it is beyond the scope of the bill.⁴ In Hong Kong, based on the President's past rulings on the question of scope or subject matter of a bill, the President takes into account all relevant factors including but not limited to the bill's long title.⁵

Procedural issues related to the long title of a bill

4. The requirement for a bill to be given a long title is one of the requirements relating to the form of a bill for presentation to the Legislative Council. This requirement is laid down in Rule 50(3) of the Rules of Procedure (RoP).⁶

5. According to Rule 54(3) of RoP, the Second Reading debate of a bill covers "the general merits and principles of the bill". The long title of a bill may serve as an indicator on the scope of the debate as Rule 41(1) of RoP provides that a Member shall restrict his observations to the subject under discussion and shall not introduce matter irrelevant to that subject. Accordingly, issues not relevant to the subject matter of the Second Reading of a bill should not be debated at Second Reading. Procedurally, it follows that Committee Stage amendments to a bill which are not relevant to the subject matter of the bill are not admissible in accordance with Rule 57(4)(a) of RoP.

6. Rule 58 of RoP sets out the proceedings on a bill when a bill is committed to a committee of the whole Council after a motion for the second reading of the bill has been agreed to.⁷ These proceedings, which are set out in Rule 58(1) to (7), involve the consideration of the clauses of the bill in detail, including amendments to clauses and new clauses. Where the bill has been so amended as to necessitate an amendment to its title, Rule 58(9) provides that the amendment to the title of the bill shall be made at the conclusion of the proceedings detailed in Rule 58(1) to (7), but no question shall be put that the title (as amended) shall stand part of the bill. In

⁴ Bennion, n 1 above, at 620-621.

⁵ Please refer to paragraphs 9 to 12 of LC Paper No. LS71/06-07 for examples of other materials or factors which may be relevant to the President's consideration of the scope or subject matter of a bill.

⁶ Rule 50(3) of RoP provides that the bill presented to LegCo shall be given a long title setting out the purposes of the bill in general terms.

⁷ According to Rule 54(3) of RoP, the Second Reading debate covers "the general merits and principles of the bill". Passage of the Second Reading of a bill signifies that the Council has agreed to these general merits and principles. The Committee Stage on a bill is to deal with proposed amendments in relation to the details of the bill.

procedural terms, it can therefore be said that the long title of a bill is postponed until consideration of the bill is concluded and that the long title may only be amended if amendments to the bill make that course appropriate.⁸

7. It has been said that Rule 58(9) of RoP is applicable to the title of a bill rather than its long title. However, it should be noted that according to parliamentary procedure and practice, where the term “title” is used without qualification it usually refers to the long title.⁹ There have been cases where the long title of a bill was amended in accordance with Rule 58(9) of RoP¹⁰, but we are not aware of any precedents where the long title of a bill is amended under RoP in the same manner as if it were a clause of a bill.

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⁸ Similar procedure is adopted in the legislatures of Canada and England. See Robert Marleau and Camille Montpetit, n 1 above, at 658 and Erskine May, n 1 above, at 536.

⁹ Erskine May, n 1 above, at 535.

¹⁰ Examples of these cases are the Mass Transit Railway Bill and Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Bill 2005 where a consequential amendment was moved by the Administration to the long title of the relevant Bill when all the clauses of the Bill have been dealt with to reflect the Committee Stage amendments passed by LegCo at the earlier stage of the proceedings on the Committee Stage of the Bill.