

立法會

Legislative Council

LC Paper No. LS71/06-07

Bills Committee on Rail Merger Bill

Application of Rule 57(4)(a) of the Rules of Procedure and matters relating to the long title of the Rail Merger Bill

Purpose

The purpose of this paper is to set out procedural matters relating to the application of Rule 57(4)(a) of the Rules of Procedure (RoP) in order to assist members of the Bills Committee on Rail Merger Bill in their consideration of whether an amendment to the Bill that may be proposed by individual members are relevant to the subject matter of the Bill as required under the Rule.

2. This paper will also analyse the effect of the long title of the Rail Merger Bill from the constitutional perspective in the light of concerns raised by some members of the Bills Committee that the long title concerned as drafted may be inconsistent with the Basic Law.

Proceedings on bills

3. In order that the procedural matters relating to the application of Rule 57(4)(a) of RoP as set out in paragraphs 6 to 12 below could be read in context, it should be noted that rules of procedures on proposed amendments to bills will only become relevant after a motion that a particular bill be read the second time has been agreed to.

4. According to Rule 55(1) of RoP, when a motion for the second reading of a bill has been agreed to, the bill shall stand committed to a committee of the whole Council which, according to Rule 56(1), shall not discuss the principles of the bill but only its details.

5. According to Rule 54(8) of RoP, when a motion for the second reading of a bill has been negatived no further proceedings shall be taken on that bill.

The requirement of relevance

6. The requirement of relevance for amendments to bills is laid down in Rule 57(4)(a) of RoP, which provides as follows-

“An amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates.”

7. Rule 57(4)(a) does not prevent an amendment by way of adding a new clause or clauses. This is made clear by Rule 56(2) which provides that a committee of the whole Council to which a bill is committed after a motion for the second reading of the bill has been agreed to shall have power to make such amendments as it shall think fit, provided that the amendments, including new clauses and new schedules, are relevant to the subject matter of the bill.

8. It can be seen from Rule 56(2) and Rule 57(4)(a) of RoP that the essential question for both proposed amendments to existing clauses and for new clauses to be added to the bill is whether the amendment is relevant to the subject matter of the bill.

Factors taken into consideration by the President in ruling on the question of the relevance of a proposed amendment

9. As a matter of established practice, the Administration is invited to express its comments on whether amendments proposed by Members meet the requirements of Rule 57(4)(a) of RoP. If the Administration is of the view that the proposed amendment does not meet those requirements, the Member will be asked to respond to that view. Counsel to the Legislature will then be asked to advise. A ruling will then be made by the President on the admissibility of the proposed amendment

10. Based on the President's past rulings on the question of the relevance of a proposed amendment, it would appear that the President, in deciding this question, will form a view on the scope of the bill, against which she will consider whether the effect of the proposed amendment is within that scope, hence relevant to the subject matter of the bill.¹

11. When considering the question of scope or subject matter of a bill, the President may take into account all relevant factors including the bill's long title, explanatory memorandum and the Legislative Council Brief (LegCo Brief). One of

¹ See President's ruling dated 31 July 2006 and 1 August 2006 on the Interception of Communications and Surveillance Bill as an example of the application of this approach.

the approaches that has been adopted is to look at the long title of a bill together with the scope of relevant clauses in the bill. This approach has been adopted in cases where a long title of a bill is worded in general terms.² There have been a few occasions where the President considered it necessary to ascertain the fundamental principles of a bill and considered whether the proposed amendment had the effect of altering these fundamental principles or merely amending its details. When determining what constitutes the fundamental principles of a bill, the President may take into account the long title of the bill and the legal effect of individual clauses in the bill.³ Under this approach, a proposed amendment is admissible if the President forms the view that the effect of a proposed amendment is not to remove the main legislative proposal of a bill and hence does not amount to altering the fundamental principles of the bill.

12. Other relevant factors that the President may take into account include the explanatory memorandum and LegCo Brief. However, these factors cannot be exhaustively listed as each case depends on its own facts. There have been cases where the President has looked at factors other than the long title and the explanatory memorandum of a bill.⁴ As for the LegCo Brief on a bill, the President will consider the extent to which the information contained in a LegCo Brief is relevant or useful to her consideration based on the facts of individual cases.⁵ On the other hand, discussions on certain issues that take place in a Bills Committee or the time taken to discuss these issues cannot on their own be considered as relevant to the scope or subject matter of a bill. What may be considered relevant in discussions that take place at a Bills Committee meeting does not necessarily become relevant to the subject matter of the bill that the Bills Committee is considering.⁶

² For example, regarding the Education (Amendment) Bill 1999, although the long title is worded generally as to amend the Education Ordinance, the President, in her ruling dated 10 March 2000 on the Bill, took into account the scope of the clauses proposed in the Bill in forming the opinion that the scope of the Bill was to amend the Education Ordinance (Cap. 279) so that the Government could enforce its policy on the retirement age of principals and teachers of aided schools only.

³ In the President's rulings on the Provision of Municipal Services (Reorganization) Bill dated 29 November 1999 and on the Immigration (Amendment) Bill 2000 dated 26 June 2001, the President took into account the long title of the Bill concerned and the legal effect of relevant clauses in the Bill to decide whether the proposed amendments go to the fundamental principles of the Bill rather than its details.

⁴ In the case of the Mass Transit Railway Bill (the MTR Bill), the President took into account the summary of the principal headings of the operating agreement between Government and the Mass Transit Railway Corporation which was annexed to the Legislative Council Brief on the MTR Bill. That summary was information available outside of the MTR Bill but was considered by the President to be relevant to her consideration of the scope or subject matter of the Bill.

⁵ Please refer to the President's ruling dated 10 July 2006 on the Betting Duty (Amendment) Bill 2006.

⁶ In the President's ruling dated 4 May 2006 on Dr Hon YEUNG Sum's proposed amendment to the Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Bill 2006 relating to the nomination arrangement in the event that there was only one Chief Executive candidate and nomination re-opened, the President ruled that the Member's proposed amendment was outside the scope of the Bill although the possibility of another round of nominations in the event of only one candidate validly nominated and the proposed consequential electoral arrangements had been discussed in the Bills Committee.

Long title of the Rail Merger Bill

13. According to the long title of the Rail Merger Bill, one of the purposes of the Bill is to provide for the regulation (other than in relation to any fare payable for using any railway service or bus service operated by the MTR Corporation Limited) under the Mass Transit Railway Ordinance (Cap. 556) of the operation by the MTR Corporation Limited (MTRCL) of certain railways and certain bus services in addition to the Mass Transit Railway, including all aspects of safety concerning those railways.

14. Some members of the Bills Committee on Rail Merger Bill have expressed concern on the way the long title of the Bill is drafted in that the use of an exclusionary clause in the long title might have the effect of preventing LegCo Members from proposing amendments relating to the regulation of any fare payable for using any railway service or bus service operated by MTRCL. The Legal Service Division was requested to advise whether the long title of the Bill, as drafted, is inconsistent with the Basic Law.

15. Under Article 62(5) of the Basic Law, the Government of the Hong Kong Special Administrative Region has the power and function to draft and introduce bills, motions and subordinate legislation. Article 73 of the Basic Law sets out the powers and functions of the Legislative Council of the Hong Kong Special Administrative Region (LegCo). Under Article 73(1), LegCo has the power and function to enact, amend or repeal laws in accordance with the provisions of this Law and legal procedures. The phrase “in accordance with the provisions of this Law and legal procedures” in the context of Article 73(1) has been interpreted to mean that LegCo must act not only in accordance with the Basic Law itself but also in accordance with the rules of procedure which the Council has the power to make on its own under Article 75(2) of the Basic Law in order to govern the manner in which it enacts, amends or repeals laws.⁷ It can therefore be said that LegCo’s power to enact, amend or repeal is subject to the Basic Law and the Rules of Procedure of LegCo.

16. While under the Basic Law, the Government and LegCo are vested respectively with the power to introduce bills and the power to enact, amend or repeal laws, the Basic Law does not set out the procedures involved in introducing bills into LegCo and in enacting or amending laws. These procedures are set out in the rules of procedure made by LegCo pursuant to Article 75 of the Basic Law. Rule 50 of RoP lays down the requirements to which a bill presented to LegCo shall conform.

⁷ *Leung Kwok Hung v The President of the Legislative Council of the Hong Kong Special Administrative Region and The Secretary for Justice*, CFI, HCAL 87/2006, 22 January 2007.

These include the requirements for the bill to be given a long title setting out the purposes of the bill in general terms⁸ and for an explanatory memorandum stating the contents and objects of the bill in non-technical language to be attached to the bill.⁹ Rule 57(4), (5) and (6) of RoP set out the requirements relating to amendments to bills. Of relevance to the present case is Rule 57(4)(a) which provides for the requirement for an amendment to be relevant to the subject matter of the bill.¹⁰

17. In order to comply with the requirement under Rule 50 of RoP, the Administration has included in the Rail Merger Bill a long title which purports to set out the purposes of the Bill. While Rule 50(3) of RoP sets out the general requirement regarding the long title of a bill, there are no provisions under RoP that specify how the long title may or may not be drafted. The use of an exclusionary clause in the long title of the Bill may be regarded as an alternative way to set out the purpose of a bill and such use is not prohibited under the Basic Law or RoP. It has been said that the long title of the Rail Merger Bill, as drafted, would have the effect of limiting the power of Members to amend the Bill in that amendments relating to fare regulation may not be admissible as such amendments may not be relevant to the subject matter of the Bill. However, it should be noted that the requirement of relevance is not imposed by the Basic Law, but is one specified in RoP, which, as decided by the courts, is one of the constitutionally binding legal procedures in accordance with which LegCo may enact, amend or repeal laws under Article 73(1) of the Basic Law.¹¹

18. In the light of paragraphs 15 to 17 above, it would seem that no issue of inconsistency with the Basic Law should arise from the way the long title of the Rail Merger Bill is drafted.

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16 May 2007

⁸ Rule 50(3) of the Rules of Procedure.

⁹ Rule 50(7) of the Rules of Procedure.

¹⁰ The provision in Rule 57(4)(a) of the Rules of Procedure is set out in paragraph 6 above.

¹¹ *Leung Kwok Hung v The President of the Legislative Council of the Hong Kong Special Administrative Region and The Secretary for Justice, ibid.*