

**President's ruling on
Committee Stage amendments to
Housing (Amendment) Bill 2007
proposed by Hon LEUNG Yiu-chung, Hon Frederick FUNG Kin-kee,
Hon WONG Kwok-hing and Hon LEUNG Kwok-hung**

Hon LEUNG Yiu-chung, Hon Frederick FUNG Kin-kee, Hon WONG Kwok-hing and Hon LEUNG Kwok-hung have given notice to move Committee Stage amendments (CSAs) to the Housing (Amendment) Bill 2007, if the motion for the Second Reading of the Bill is passed at the meeting of the Legislative Council (LegCo) on 13 June 2007. Before making a ruling on the admissibility of these CSAs, I have invited the Secretary for Housing, Planning and Lands (SHPL) to offer his comments on the CSAs, and the Members concerned to offer their responses. I have also sought the advice of the Counsel to the Legislature.

The Administration's views and responses from Members

2. For easier reading, SHPL's comments on the CSAs proposed by the above Members, and the respective responses of the Members concerned are summarized in the **Appendix**.
3. The relevant rules in the Rules of Procedure (RoP) relating to amendments to bills referred to in this ruling are Rules 56(1) and 57(4)(a) and (c). Details of these rules are as follows -
 - (a) Rule 56(1): "Any committee of the whole Council or select committee to which a bill is committed shall not discuss the principles of the bill but only its details";
 - (b) Rule 57(4)(a): "An amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates"; and
 - (c) Rule 57(4)(c): "An amendment must not be such as to make the clause which it proposes to amend unintelligible or ungrammatical".

Advice of Counsel to the Legislature

4. Counsel to the Legislature has given his opinion which is set out in the following paragraphs.

Subject matter of the Bill

5. Counsel advises me to refer to the background to the introduction of

this Bill in the LegCo Brief and the Report of the Bills Committee on Housing (Amendment) Bill 2007¹, which is useful for understanding the objectives of the Bill, and thereby determining its subject matter.

6. Counsel points out that under section 16(1) of the Housing Ordinance (Cap. 283) (HO), the Housing Authority (HA) is authorized to determine rent of public rental housing (PRH) without being subjected to any conditions or limitations. It had been HA's practice to determine rent by administrative means rather than by any statutory mechanism. Section 16(1A) to (1E) of HO was passed by the previous LegCo on 27 June 1997. These provisions impose two limitations on HA's authority in the determination of rent in respect of PRH rent as follows -

- (a) a determination for rent variation shall only take effect at least three years from the last determination, i.e. there has to be a three-year interval between two successive dates of determination; and
- (b) the rent so determined shall not exceed 10% of the median rent to income ratio² (MRIR).

7. According to paragraph 2 of the LegCo Brief, the MRIR cap of 10% on rent adjustment referred to in paragraph 6(b) above is seriously flawed for reasons including the view that it is highly inappropriate to adopt the MRIR as a rent adjustment mechanism since an increase in the MRIR can be triggered by extraneous factors other than changes in individual tenants' rent and household income per se, and that under the existing HO, once the MRIR cap of 10% is exceeded, the rent can only go down but not go up. It is stated in footnote no. 2 in the LegCo Brief that the Court of Final Appeal ruled in November 2005 that the 10% MRIR cap would only apply to a decision to increase rent.

8. In paragraphs 3 and 4 of the LegCo Brief, it is stated that the amendments to HO are to remove the MRIR cap in order to enable HA to introduce the new income-based rent adjustment mechanism in order to implement a key recommendation of HA's review of its domestic rent policy.

9. Counsel advises that against the above background, the main purpose of the Bill, as set out in the long title, is to replace section 16(1A), (1B), (1C), (1D) and (1E) of HO with -

- (a) provisions relating to review of the rent of certain residential

¹ See paragraphs 2 to 7 of the Report of the Bills Committee on Housing (Amendment) Bill 2007, LC Paper No. CB(1)1782/06-07

² According to section 16(1D), "For the purposes of subsection (1A)(b), the median rent to income ratio ("the ratio") shall be determined in accordance with a procedure established by the Authority and, without prejudice to the generality of the foregoing, the Authority may establish a procedure involving sampling to determine the incomes to be used for the purpose of calculating the ratio". HO does not contain a definition on the MRIR.

units;

- (b) provisions requiring HA to vary the rent of those units with reference to the change in an index reflecting the level of household income of certain tenants of residential units;
- (c) provisions specifying when HA shall not, or is not required to, make such a variation; and
- (d) provisions empowering HA to round down the amount of the rent in such a variation and to make determinations in relation to the compilation of such an index.

10. Counsel also advises that in line with the purposes set out in the long title, the Explanatory Memorandum states that the main object of the Bill is to amend HO, with the main purpose of replacing section 16(1A), (1B), (1C), (1D) and (1E) of HO with provisions requiring HA to vary the rent of those units with reference to the change in an index reflecting the level of household income of certain tenants of residential units. These replacement provisions are proposed new section 16A (1) to (9) in clause 4 of the Bill. Subsection (1) requires HA to review PRH rent every two years. Subsection (3) excludes certain rent adjustments from the application of the rent adjustment mechanism proposed in the new section 16A. Subsection (4) requires HA to vary PRH rent by the rate of increase or rate of reduction which is the difference between the two income indexes for the first period and second period of review respectively. According to subsections (8) and (9), "income index" is compiled by HA to reflect the level of the mean monthly household income of a class of residential tenants over a relevant period of time. Subsection (6) enables HA not to vary the rent if the amount of the variation according to subsection (4) is insignificant.

11. Counsel is of the view that based on the above, the subject matter of the Bill appears to contain two fundamental principles -

- (a) the removal of the MRIR cap from HO by repealing section 16(1A) to (1E); and
- (b) the provision of a rent adjustment mechanism (which would be new to HO) so that PRH rents are varied (or adjusted) by HA with reference to the change in the income index reflecting the level of household income of certain tenants of residential units.

12. Counsel advises that in the context of this Bill, a proposed CSA which reverses the above two fundamental principles is outside the scope of the Bill. In other words, any arrangement which would have the effect of, for example, restoring the MRIR as a cap to an increase of rent or rendering the new rent adjustment mechanism not able to operate with reference to changes in the income index would be outside the scope of the Bill and, therefore, not

relevant to the subject matter of the Bill.

Hon LEUNG Yiu-chung's proposed CSAs

13. Counsel points out that Hon LEUNG Yiu-chung's proposed CSAs seek to prolong the rent review and variation cycle as provided in the proposed section 16A(1) and (5) from two years to three years. He also seeks to amend section 16A(9) by proposed CSAs which are technical and consequential.

14. Counsel also points out that SHPL does not object to the admissibility of the proposed CSAs on procedural grounds. He has only mentioned some drafting problems and inconsistencies. Counsel considers that these problems do not appear to be of such seriousness that they would cause the relevant CSAs inadmissible under Rule 57(4)(c).

Hon Frederick FUNG's proposed CSAs

15. Counsel explains that Hon Frederick FUNG's proposed CSAs may be categorized into four groups according to their intended effect -

- (a) to change the rent review cycle from the proposed two years to three years (1st proposed amendment);
- (b) to put in a ceiling of "less than 10%" on the percentage increase in rent in the proposed section 16A(4)(a) (2nd proposed amendment);
- (c) to impose an additional limitation on increase in rent calculated in accordance with the proposed section 16A(4)(a) by making reference to the "average rent-to-income ratio" (ARIR) in that the increase shall not lead to that ratio exceeding 15% (3rd proposed amendment); and
- (d) if rent is decreased under the proposed section 16A(4)(b), to require the rate of rent decrease be of such that it will lead to the ARIR being equal to or less than 15% (4th proposed amendment).

16. The 1st proposed CSA seeks to change the rent review cycle from two years to three years. It relates to the details of the proposed rent adjustment mechanism. The 2nd proposed CSA seeks to impose a ceiling of "less than 10%" on the rent increase as determined in accordance with the proposed section 16A(4)(a). It also relates to the details of that mechanism. Both the 1st and 2nd proposed CSAs are relevant to the subject matter of the Bill. In relation to the 2nd proposed CSA, SHPL is of the view that there would be legal ambiguity if the rate of increase of the income index equals to or exceeds 10%. Mr FUNG's response is to the effect that HA would comply with the cap as long as the rate of increase adopted is below 10%. In Counsel's view,

this proposed CSA's lack of precision goes to its merit and does not raise procedural issues relating to its admissibility.

17. Counsel further advises that the 3rd and 4th proposed CSAs might not be able to achieve the effect intended by Mr FUNG because of some drafting difficulties explained in paragraph 18 below. However, assuming that those difficulties are resolved, the proposed CSAs may be considered as relevant to the subject matter of the Bill as their effect is on the amount of rent payable as determined in accordance with the new rent adjustment mechanism under the proposed section 16A(4)(a) or (b) which, in procedural terms, relates to the details of the rent adjustment mechanism. The 3rd proposed CSA would put a cap on rent increases, in that any increase of rent shall not lead to the ARIR exceeding 15%. The 4th proposed CSA is not a cap as such. It would only be activated if rent reduction becomes necessary under the new rent adjustment mechanism provided in section 16A(4)(b). Once the proposed CSA is activated, the rate of decrease shall be one that would lead to the ARIR being equal to or less than 15%. These two proposed CSAs are relevant to the subject matter of the Bill.

18. Counsel has also referred to SHPL's comments on the drafting problems in some of Mr FUNG's proposed CSAs. Mr FUNG's proposal to add his 3rd and 4th proposed CSAs to section 16A(5) would make the subsection incomprehensible. It is apparent that Mr FUNG has identified the wrong place in the proposed section 16A to add the two proposed CSAs. In this respect, Counsel's advice is that I may have to return the notice of motion that relates to the two proposed CSAs to Mr FUNG on the ground that they fail to meet the requirement under Rule 57(4)(c), and if he seeks my further consideration, I shall then consider the matter afresh.

Hon WONG Kwok-hing's proposed CSA

19. Counsel points out that Hon WONG Kwok-hing's proposed CSA is to impose a cap on the increase of rent under the proposed section 16A(4)(a) by adding a proviso to paragraph (a) in subsection (4), so that such increase must not result in the MRIR to exceed 12%.

20. Counsel advises that the effect of the proposed CSA is that the MRIR cap would be restored in HO, hence contrary to one of the fundamental principles of the Bill as explained in paragraphs 11 and 12 above. This proposed CSA is outside the scope of this Bill, and is therefore not relevant to the subject matter of the Bill. The inconsistencies between the Chinese and English versions of the proposed CSA, as pointed out by SHPL, would not have to be dealt with if I rule the proposed CSA not relevant to the subject matter of the Bill.

Hon LEUNG Kwok-hung's proposed CSA

21. Counsel advises that the intended effect of Hon LEUNG

Kwok-hung's proposed CSA is similar to Hon WONG Kwok-hing's. For the same reason that applies to Mr WONG's proposed CSA, Mr LEUNG's proposed CSA should be ruled not relevant to the subject matter of the Bill.

My opinion

Hon LEUNG Yiu-chung's proposed CSAs

22. Hon LEUNG Yiu-chung's proposed CSAs mainly seek to prolong the rent review and variation cycle from two years to three years.

23. Counsel advises me that the proposed CSAs do not raise any issues relating to the scope of the Bill which require my consideration. SHPL also does not object to the admissibility of the proposed CSAs on procedural grounds.

24. As regards the drafting problems and inconsistencies between the Chinese and English versions of the proposed CSAs, I note that these have already been rectified by Mr LEUNG in accordance with the normal practice for processing CSAs to bills by the LegCo Secretariat.

25. I rule that Mr LEUNG's CSAs are admissible.

Hon Frederick FUNG's proposed CSAs

26. Hon Frederick FUNG has proposed a number of CSAs. Regarding his proposed CSAs to prolong the rent review and variation cycle from two years to three years, they are the same as Hon LEUNG Yiu-chung's (paragraph 22 above refers) which I have ruled to be admissible.

27. Mr FUNG has proposed a CSA to cap the rate of the increase in the income index provided that the increase is "less than 10%" thereof. I take Counsel's advice that the CSA is relevant to the subject matter of the Bill. As regards the "legal ambiguity" of the CSA referred to by SHPL, I agree with Counsel that it concerns the merit of the proposal and does not raise any procedural issues for my consideration. The CSA is also admissible.

28. Mr FUNG has proposed to introduce an additional ARIR cap of 15% on the increase of rent. Mr FUNG has also proposed that the rate of deduction of rent shall be one that would lead to the ARIR being equal to or less than 15%. SHPL has commented that the proposed CSAs are irrelevant to the subject matter of the Bill because the purpose of the Bill is to replace the MRIR cap with a new rent adjustment mechanism that provides for both upward and downward rent adjustment with reference to the change in income index reflecting the level of PRH tenants' household income. The introduction of a cap with reference to the rent to income ratio, whether it is calculated by using the average concept or median concept, requires the rent to be adjusted with

reference not only to the changes in the income index but also those of a rent to income ratio.

29. The long title states that the Bill is to amend HO to replace section 16(1A), (1B), (1C), (1D) and (1E) of the Ordinance with –

- "(a) provisions relating to review of the rent of certain residential units;
- (b) provisions requiring the Housing Authority to vary the rent of those units with reference to the change in an index reflecting the level of household income of certain tenants of residential units;
- (c) provisions specifying when the Housing Authority shall not, or is not required to, make such a variation; and
- (d) provisions empowering the Housing Authority to round down the amount of the rent in such a variation and to make determinations in relation to the compilation of such an index."

30. Counsel advises me that section 16(1A), (1B), (1C), (1D) and (1E) of HO provides that any determination for variation of rent by HA shall only take effect at least three years after the last determination came into effect, and that the rent so determined shall not exceed 10% of the MRIR. It is very clear to me that any proposed CSA which has the effect of restoring the MRIR as a cap is outside the scope of the Bill and is not relevant to the subject matter of the Bill.

31. Regarding Mr FUNG's proposed CSA to introduce a new ARIR cap, my view is that he is not seeking to restore the MRIR cap. His CSA relates to the details of the rent adjustment mechanism proposed in the Bill. Mr FUNG's proposal to add this factor to that mechanism is similar in nature to SHPL's proposed addition of a 10% cap to the amount of rent increase that HA must determine in accordance with the proposed section 16A(4)(a). Mr FUNG's proposal that the rate of deduction of rent shall be one that would lead to the ARIR being equal to or less than 15% also relates to the details of the rent adjustment mechanism. The proposal would only operate if a rent reduction is required when the income index for the second period of rent review is lower than the income index for the first period.

32. Counsel, however, has pointed out that Mr FUNG's proposed CSAs might not be able to achieve the effect that he intended because of some drafting difficulties with them. Counsel advises that Mr FUNG has identified the wrong subsection to add his two proposed CSAs, and as the amended subsection would then become incomprehensible, the proposed CSAs might be contravening Rule 57(4)(c) which states that an amendment must not be such as to make the clause which it proposes to amend unintelligible or ungrammatical.

33. My view is that the intended effect of the proposed CSAs is clear from the terms of the proposed provisions, and the problems identified by SHPL and Counsel are purely technical. I had asked the LegCo Secretariat to let Mr FUNG know that if he submitted, by 9:00 am on 10 June 2007, a revised version of the CSAs, containing only textual modifications to address the problems identified, I would waive the requisite notice. The revised version of Mr FUNG's CSAs was received at around 11:45 pm on 9 June 2007. I have not invited SHPL to comment on Mr FUNG's revised CSAs as they have practically the same effect as Mr FUNG's original CSAs. In short, the changes are technical and not substantive.

34. For reasons given in paragraph 31 above, Mr FUNG's proposed CSAs are within the scope of the Bill and relevant to the subject matter of the Bill. I rule that they are admissible.

Hon WONG Kwok-hing's proposed CSA

35. Hon WONG Kwok-hing's proposed CSA seeks to impose a cap on the increase of rent by adding a condition that such increase must not result in the MRIR to exceed 12%. This is clearly to restore the MRIR cap which I consider to be outside the scope of the Bill. The CSA may not be moved.

36. As I have ruled that the CSA is inadmissible, I shall not deal with the problem of inconsistencies between the Chinese and English versions of the proposed CSA.

Hon LEUNG Kwok-hung's proposed CSA

37. Hon LEUNG Kwok-hung's proposed CSA seeks to retain the existing 10% MRIR cap on the increase of rent under the proposed income index based rent adjustment mechanism.

38. Counsel advises that the intended effect of Hon LEUNG Kwok-hung's proposed CSA is similar to Hon WONG Kwok-hing's. For the same reason that I have detailed in paragraph 35 above, I rule Mr LEUNG's CSA inadmissible.

My ruling

39. I accept that the two fundamental principles set out in paragraphs 11 and 12 above form the subject matter of the Bill, and that any CSA which seeks to restore the MRIR cap is outside the scope of the Bill.

40. Having considered SHPL's comments, Members' responses and the advice of Counsel to the Legislature, I rule that the respective CSAs proposed by Hon LEUNG Yiu-chung and Hon Frederick FUNG are admissible, while the

respective CSAs proposed by Hon WONG Kwok-hing and Hon LEUNG Kwok-hung are inadmissible.

(Mrs Rita FAN)
President
Legislative Council

11 June 2007

Housing (Amendment) Bill 2007

Summary of Members' proposed Committee Stage amendments (CSAs),
Secretary for Housing, Planning and Lands (SHPL)'s comments and Members' responses

	Proposed CSAs	SHPL's comments	Members' responses
(a) Hon LEUNG Yiu-chung			
(i)	<u>Clause 4</u> To prolong the rent review and variation cycle as provided in the proposed section 16A(1) and (5) from two years to three years; and to make technical and consequential amendments to the proposed section 16A(9)	There are drafting problems and inconsistencies between the Chinese and English versions. The CSAs would pose difficulties to the operation and workability of the rent variation in future.	The drafting problems and inconsistencies between the Chinese and English versions have been rectified.
(b) Hon Frederick FUNG Kin-kee			
(i)	<u>Clause 4</u> To amend the proposed section 16A(5)(b) to change the rent review cycle from two years to three years; and to make technical and consequential	The proposal would pose difficulties to the operation of the rent adjustment mechanism and would delay unnecessarily future rent variations, including rent decreases.	The proposal would enhance the stability of the rent level instead of causing delay to rent variations.

	Proposed CSAs	SHPL's comments	Members' responses
	amendments to 16A(1) and 16A(9)		
(ii)	<u>Clause 4</u> To put in a ceiling of less than 10% on the percentage increase in rent in the proposed section 16A(4)(a)	The proposed CSA does not specify a determinative upper limit for which the rent increase should be capped. This legal ambiguity may subject the Housing Authority (HA) to possible legal challenges whenever the rate of increase of the income index equals to or exceeds 10%.	The wording of the CSA is very clear and would not subject HA to legal challenges.
(iii)	<u>Clause 4</u> To impose an additional limitation on increase in rent calculated in accordance with the proposed section 16A(4)(a) by making reference to the "average rent-to-income ratio" (ARIR) in that the increase shall not lead to that ratio exceeding 15%; and, if rent is decreased under the proposed section 16A(4)(b), to require the rate of rent decrease be of such that it will lead to the ARIR being equal to or less than 15%	The proposed introduction of an ARIR is irrelevant to the subject matter of the Bill, and contravenes Rule 57(4) of the Rules of Procedure (RoP). The purpose of the Bill, as stated in its long title and the Legislative Council (LegCo) Brief, is to replace the median rent to income ratio (MRIR) cap with a new rent adjustment mechanism that provides for both upward and downward rent adjustments with reference to the change in an income index reflecting the level of public rental housing (PRH) tenants' household income. The introduction of a cap with reference to the rent to income ratio, whether it is calculated by using the average concept or median concept, requires the relevant rent to be adjusted with reference not only to the changes in the income index but also those of a rent to income ratio. This would be contrary to the principles of the Bill and is irrelevant to its subject matter which aims to require HA to increase and decrease the relevant rent with	The ARIR is a new rent adjustment mechanism. It is not the same as the MRIR in the existing legislation, because the ARIR could better reflect the overall rent to income ratio of PRH tenants. Compared to the MRIR which could easily be affected by other factors, the ARIR would to a lesser extent be affected by other factors. When PRH rent is being adjusted, the ARIR is to ensure that when the overall average household income increases, the expenses on rent is still affordable by those households whose income has increased at a lesser rate than the overall average household income, as well as by those whose income has even decreased rather than increased. The ARIR is a very easy to understand mathematical concept, and it is not necessary to provide a definition for the term in law. The drafting problems of the CSAs have been

	Proposed CSAs	SHPL's comments	Members' responses
		<p>reference to the change in the income index.</p> <p>The implementation of the proposal would also involve operational difficulties and legal uncertainties. There are also drafting problems with the proposed CSAs. If the proposed section 16A(5) were amended by the CSAs, the resultant sentences are ungrammatical and incomprehensible. More fundamentally, clause 4 of the Bill intends to add a new section 16A, and not section 16(A), to the Housing Ordinance. Mr FUNG aims to move CSAs to section 16(A), which does not exist in the Amendment Bill. The proposed CSAs would contravene Rule 57(4) as being unintelligible.</p>	<p>rectified.</p>
(c) Hon WONG Kwok-hing			
(i)	<p><u>Clause 4</u> To impose a cap on the increase of rent under the proposed section 16A(4)(a) so that such increase must not result in the MRIR to exceed 12%</p>	<p>The purpose of the Bill, as stated in its long title of the Bill and the LegCo Brief, is to replace the MRIR cap with a new rent adjustment mechanism that provides for both upward and downward rent adjustments with reference to the change in an index reflecting the level of PRH tenants' household income. Since the removal of the MRIR cap is integral to the purpose of the Bill, the proposed CSA to retain the MRIR cap, despite a different percentage having been proposed, is a reversal of the principles of the Bill, and is not merely an amendment to the "details" of the Bill. According to Rule 56(1) of RoP, the committee of</p>	<p>The proposal submitted would not impede the Administration from replacing the original mechanism by the new rent adjustment mechanism. It only seeks to introduce a MRIR cap at 12% in the new mechanism in respect of rent increase. The purpose is to set a genuinely effective rent increase cap for PRH tenants, so that the increase in rent remains to be within the tenants' affordability.</p>

	Proposed CSAs	SHPL's comments	Members' responses
		<p>the whole Council shall not discuss the principles of the Bill but only its details.</p> <p>There are also inconsistencies between the Chinese and English versions. Furthermore, the implementation of the CSAs would involve much operational difficulties and legal ambiguity.</p>	
(d) Hon LEUNG Kwok-hung			
(i)	<p><u>Clause 4</u> To amend the proposed section 16A(5) to impose a cap on the increase of rent so that such increase must not result in the MRIR to exceed 10%</p>	<p>The CSAs are irrelevant to the subject matter of the Bill, and contravene Rule 57(4) of RoP. The purpose of the Bill, as stated in the long title of the Bill and the LegCo Brief, is to replace the MRIR cap with a new rent adjustment mechanism that provides for both upward and downward rent adjustments with reference to the change in an index reflecting the level of PRH tenants' household income. Since the removal of the MRIR cap is integral to the purpose of the Bill, the amendment to retain the MRIR 10% cap is a reversal of the principles of the Bill, and is not merely an amendment to the "details" of the Bill. According to Rule 56(1), the committee of the whole Council shall not discuss the principles of the Bill but only its details.</p> <p>There are also drafting problems with the proposed amendments. Furthermore, the implementation of the CSAs would involve operational difficulties and legal ambiguity.</p>	<p>Apart from accepting the revisions on the format and language use of the provisions as suggested by the Administration, no other changes will be made.</p>