

**President's ruling on
Committee Stage amendment to
Legislative Council (Amendment) Bill 2007
proposed by Hon SIN Chung-kai, SBS, JP**

Hon SIN Chung-kai has given notice to move a Committee Stage amendment (CSA) to the Legislative Council (Amendment) Bill 2007, if the motion for the Second Reading of the Bill is agreed to at the meeting of the Legislative Council (LegCo) on 23 April 2008. Before making a ruling on the admissibility of the CSA, I have invited the Secretary for Constitutional and Mainland Affairs (SCMA) to offer his comments and Mr SIN to offer his response. I have also sought the advice of the Counsel to the Legislature.

Hon SIN Chung-kai's proposed amendment

2. Mr SIN proposes to amend the Bill by adding a new clause 9A to the Bill, which repeals "during the relevant period" in item 2(a) of Part 2 of Schedule 1D and repeals item 4(a) of Part 2 of Schedule 1D to the Legislative Council Ordinance (LCO). The amendment has the effect of removing certain criteria for members of the two umbrella organizations in the information technology functional constituency (ITFC) to be eligible for registration as electors of the ITFC. The CSA would enable certain members of the two organizations, who are presently not eligible for registration as ITFC electors, to become eligible.

The Administration's view

3. SCMA is of the view that Mr SIN's proposed CSA does not fall within the scope of the long title of the Bill, since:
- (a) it is not seeking to update the names of certain bodies which are eligible to be registered as electors or voters;
 - (b) it is not seeking to remove the name of any body that ceases to be eligible;
 - (c) it is not seeking to amend the description of the members of the bodies referred to in section 20Z(1)(a) and (f) of the LCO; and
 - (d) it is not related to the Hong Kong Sports Institute Limited and the Tobacco Association of Hong Kong Limited.

SCMA points out that the explanatory memorandum of the Bill clearly specifies that the main objects of the Bill are to amend the LCO and the Chief Executive Election Ordinance (CEEEO) for the purposes set out in the long title of the Bill.

4. SCMA also refers to paragraph 5 of the LegCo Brief on the Bill, which states that the Bill seeks to amend the LCO to update the electorate of functional constituencies and, where necessary, makes consequential amendments to the CEEEO. He considers that the proposed CSA is not relevant to the purposes as outlined in the LegCo Brief.

5. SCMA concludes that the proposed CSA is not relevant to the subject matter of the Bill and thus does not comply with Rule 57(4)(a) of the Rules of Procedure.

Response from the Member

6. Hon SIN Chung-kai points out that with the "relevant period" requirement in section 20Z of the LCO, members of the Information Systems Audit and Control Association (Hong Kong Chapter) Limited (ISACA) and the Professional Information Security Association (PISA) require up to nine years of working experience before they can be registered as electors of the ITFC. This requirement is far higher than that stipulated in section 20Z of the LCO for members of other organizations in the ITFC. Professionals engaged in the fields of information systems audit and control as well as information security are therefore unfairly and inequitably treated. Mr SIN emphasizes that information systems audit and control and information security are both specialized fields within the ITFC. Professionals engaged in these fields generally possess many years of experience in information technology, and have passed the strict professional certification recognized internationally and by the local information technology industry. The standard of professional expertise in information technology of those professionals is beyond doubt.

7. Mr SIN considers that the Administration, in designating electorates for functional constituencies, should respect the autonomy of professional organizations and allow them to decide on the eligibility criteria of their members to become electors. More importantly, the Administration should ensure that professionals with comparable experience enjoy equal voting rights in the same functional constituency election. The eligibility criteria for electors in the same functional constituency should be consistent. Therefore, the Administration should not impose additional requirements, such as a specified period of professionally recognized working experience, on members of individual professional organizations in the same functional constituency. The additional requirements are tantamount to depriving those professionals of their right in functional constituency election, and indirectly impede and

interfere with the autonomy and development of the professional organizations concerned.

8. Mr SIN considers that the Administration should take the opportunity of the present Bill to rectify the unfair and inequitable situation. As the Administration has indicated to the Bills Committee that it is not possible for the matter to be dealt with in the current legislative exercise, he therefore proposes to move the CSA.

Advice of the Counsel to the Legislature

9. Counsel advises me that an examination of the provisions in the Bill together with the explanatory memorandum shows that the subject matter of the Bill is that as set out in the long title of the Bill¹.

10. Counsel points out that Mr SIN's proposed subclauses (1) and (2) of the new clause 9A relate to ISACA and PISA respectively. By virtue of section 20Z(1)(ja) of the LCO, eligible persons of either of these two bodies are eligible to register as electors in the ITFC. The third column in Part 2 of Schedule 1D to the LCO further specifies in items 2(a) and (b), and 4(a) and (b) qualifications required of these eligible persons against each of these bodies respectively.

11. Counsel advises me that in relation to ISACA, the legal effect of the proposed new clause 9A(1) would remove the requirement that the eligible person has to be confirmed by ISACA to have been holder of the Certified Information Systems Auditor Certification during the four years before the person applies for registration as an elector in the ITFC. In relation to PISA, the legal effect of the proposed new clause 9A(2) would remove the requirement that the eligible person has to be confirmed by PISA to have been a holder of the Certified Information Systems Security Professional Certification during the four years before the person applies for registration as an elector in the ITFC.

12. Counsel advises me that Mr SIN's proposed CSA does not relate to any of the proposed amendments contained in the Bill. It does not seek to amend any of the clauses in the Bill nor is it proposed as consequential amendment to other amendments being proposed. Clause 6 of the Bill is the

¹ "Amend the Legislative Council Ordinance and make consequential amendments to the Schedule to the Chief Executive Election Ordinance, in relation to certain functional constituencies, to: (a) update the names of certain bodies, (i) which are, or are eligible to be registered as, electors or voters; and (ii) certain members of which are, or are eligible to be registered as, electors or voters; (b) remove the name of any body that ceases to be eligible for registration as an elector or voter; (c) amend the description of the members of the bodies referred to in section 20Z(1)(a) and (f) of the Legislative Council Ordinance; (d) include the Hong Kong Sports Institute Limited in the composition of the sports, performing arts, culture and publication functional constituency and the relevant Election Committee subsector; and (e) include members that are entitled to vote at general meetings of the Tobacco Association of Hong Kong Limited in the composition of the wholesale and retail functional constituency and the relevant Election Committee subsector, and to make a minor clerical amendment to the Legislative Council Ordinance."

only provision which deals with the composition of the ITFC. It bears the same heading as that proposed for the new clause 9A. The fact that Mr SIN is proposing a new clause to deal with the ITFC, instead of proposing an amendment to clause 6, is indicative that the substance of his proposed amendment is not relevant to the subject matter of clause 6.

13. Counsel points out that in Mr SIN's response to the Administration's view that his proposed amendment is not relevant to the subject matter of the Bill and thus does not comply with Rule 57(4)(a) of the Rules of Procedure, Mr SIN seeks to explain his reasons for proposing the amendment, but offers no procedural argument in this regard. The substance of his response relates to the merits of his proposed amendment, which are not relevant to the issue of admissibility.

14. Counsel agrees with the Administration's view that Mr SIN's CSA is not relevant to the subject matter of the Bill.

My opinion

15. Rule 57(4)(a) of the Council's Rules of Procedure provides that "An amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates."

16. I accept Counsel's advice on the object and the subject matter of the Bill, which is detailed in the provisions in the Bill and the LegCo Brief. I have also stated in my previous rulings relating to Rule 57(4)(a) that I cannot consider the merits of the proposed amendments to bills.

Ruling

17. I rule that Hon SIN Chung-kai's proposed CSA is not relevant to the subject matter of the Bill. It is not admissible under Rule 57(4)(a) of the Rules of Procedure.

(Mrs Rita FAN)
President
Legislative Council

17 April 2008