

**President's ruling on
The Hong Kong Polytechnic University (Amendment) Bill 2009
proposed by Dr Hon LAM Tai-fai, BBS, JP**

Dr Hon LAM Tai-fai submitted to me on 22 September 2009 The Hong Kong Polytechnic University (Amendment) Bill 2009 ("the Bill") which he intends to introduce into the Legislative Council ("LegCo").

2. Rule 51(3) of the Rules of Procedure ("RoP") provides that Members may not either individually or jointly introduce a bill which, in the opinion of the President, relates to public expenditure or political structure or the operation of the Government. Rule 51(4) provides that in the case of a bill which, in the opinion of the President, relates to Government policies, the written consent of the Chief Executive ("CE") is required for its introduction.

3. To assist me in considering whether Dr LAM's Bill is caught by Rule 51(3) and (4) of RoP, I have invited the Administration to comment on the Bill and Dr LAM to respond to the Administration's comments. I have also sought the advice of Counsel to the Legislature on the legal aspects of the Bill in relation to the application of Rule 51(3) and (4).

Purpose of the Bill

4. According to Dr LAM's letter dated 22 September 2009 to me and the LegCo Brief on the Bill provided to the Panel on Education on 3 November 2009, the amendments to be made by the Bill to The Hong Kong Polytechnic University Ordinance (Cap. 1075) ("HKPUO") are proposed with the approval of the Council of The Hong Kong Polytechnic University ("PolyU's Council") after considering the recommendations of the Report on Higher Education in Hong Kong published in March 2002 and the recommendations of the Governance and Management Review conducted by PolyU in response to the Report, as well as the comments of the Public Accounts Committee of LegCo and the Education Bureau. The changes proposed in the Bill include:

- (a) allowing members of PolyU's Council who are employees and students to participate in the appointment and removal of the President and the Deputy President of PolyU;
- (b) reducing the number of members of PolyU's Council from 29 to 25;
- (c) changing the composition of PolyU's Council, including reducing the number of lay members, i.e. members who are not employees or students of PolyU, from 20 to 17 and empowering PolyU's Council to appoint 8 of them;

- (d) defining more clearly that the role of PolyU's Council is to set the policy governing the terms and conditions of service of staff members; and
- (e) making modifications to the objects of PolyU in line with its development and changes in the social environment.

5. According to Counsel's advice, the amendments relevant to the issue of admissibility of the Bill under RoP are the reduction of the number of members appointed by CE to PolyU's Council and the removal of the express provision relating to CE's power to appoint public officers to that council (clause 8(3) of the Bill, which proposes to amend section 10(1)(d) of HKPUO).

6. Counsel points out that under section 10(1)(d) of HKPUO, PolyU's Council consists of, among others, 20 members appointed by CE of whom not more than 2 shall be public officers. Clause 8(3) of the Bill proposes to repeal section 10(1)(d) and to substitute it by a new provision by which the number of members to be appointed under the new provision is reduced to 17 of which the number of members to be appointed by CE is reduced to 9 with the remaining 8 to be appointed by PolyU's Council. The express provision of CE to appoint not more than 2 public officers to PolyU's Council is removed.

The Administration's comments

7. The Administration does not consider that the Bill relates to public expenditure, political structure, or the operation of the Government. The Bill, however, relates to Government policies as it would affect CE's power to appoint members to PolyU's Council, in that the number of members to be appointed by CE would be reduced and CE's power in relation to a member who is a public officer would be affected.

Dr Hon LAM Tai-fai's response

8. Dr LAM does not have any view on the Administration's comments.

My opinion

9. Dr LAM's Bill proposes various amendments to HKPUO, including changes in the number of members and composition of PolyU's Council, which is the governing body of PolyU. In my previous rulings¹, I have stated that in order for a bill not to be caught by Rule 51(4) of RoP, the bill must not have

¹ Rulings on the Smoking (Public Health) (Amendment) Bill 2009 proposed by Hon Albert CHAN and the Mandatory Provident Fund Schemes (Amendment) Bill 2009 proposed by Hon LEE Cheuk-yan.

substantive effect on Government policies which include policies reflected in legislation. I am of the view that the current Government policy relating to appointment of members to PolyU's Council is clearly reflected in the existing section 10(1)(d) of HKPUO. The policy is that all the 20 lay members, which constitute about two-thirds or a majority of the membership of PolyU's Council (20 out of 29 members), are to be appointed by CE, of whom not more than 2 shall be public officers.

10. Dr LAM's Bill seeks to respectively reduce the number of members of PolyU's Council from 29 to 25, the number of lay members from 20 to 17, and the number of lay members appointed by CE from 20 to 9. In addition, the appointment of public officers by CE as lay members is no longer expressly provided. Dr LAM's Bill also proposes to empower PolyU's Council to appoint 8 of the 17 lay members to enable PolyU's Council to assume some degree of autonomy in appointing lay members from the business, industrial, professional and other relevant sectors in accordance with the needs of the University for expert advice².

11. The above changes proposed in the Bill clearly would have substantive effect on the Government policy as reflected in the HKPUO in that the number of members to be appointed by CE to the PolyU's Council would be reduced from 20 to 9 and the express provision that relates to CE's power to appoint public officers to that council would be removed.

Ruling

12. I rule that Dr LAM's Bill relates to Government policies within the meaning of Rule 51(4). The Bill may not be introduced without the written consent of CE.

(Jasper TSANG Yok-sing)
President
Legislative Council

27 November 2009

² Paragraph 7(iv) of the LegCo Brief on the Bill (LC Paper No. CB(2) 180/09-10(03)).