

**President's ruling on Committee stage amendments to
the Legislative Council (Amendment) Bill 2010
proposed by Dr Hon Margaret NG,
Hon Andrew CHENG and Hon Paul TSE**

Dr Hon Margaret NG, Hon Andrew CHENG and Hon Paul TSE have given notice to move Committee stage amendments (“CSAs”) to the Legislative Council (Amendment) Bill 2010 (“the Bill”), if the motion for the Second Reading of the Bill is agreed to at the meeting of the Legislative Council of 2 March 2011. Before considering the admissibility of the CSAs under the Rules of Procedure, I invited the Administration to comment on the CSAs and Dr NG, Mr CHENG and Mr TSE to respond to the Administration’s comments.

Relevant rules of the Rules of Procedure

2. In commenting on the Members’ CSAs, the Administration submits that some of them are either in breach of Rule 57(4)(a) or Rule 57(6) of the Rules of Procedure. Rule 57(4)(a) provides that an amendment to a bill must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates. Rule 57(6) provides that an amendment to a bill, the object or effect of which may be to dispose of or charge any part of the revenue or other public moneys of Hong Kong shall be proposed only by the Chief Executive; or a designated public officer; or a Member, if the Chief Executive consents in writing to the proposal.

Purposes of the Bill

3. According to its long title, the purposes of the Bill are to amend the Legislative Council Ordinance (Cap. 542) (“LCO”) and the relevant subsidiary legislation to:

- (a) add 10 seats to the Legislative Council five of which are to be returned from the existing geographical constituencies (“GC”) and five from a new District Council (“DC”) functional constituency (“FC”) to be added to the existing FCs and to make provision for the filling of the seats of such constituencies;

- (b) provide that only elected DC members may be registered as electors for the existing DC FC which will be renamed as the “District Council (first) functional constituency” and that such electors may not be registered as electors for any other FC;
- (c) amend the lists of persons of whom FCs are composed;
- (d) disqualify consular posts and certain international organizations from being registered as corporate electors;
- (e) increase the financial assistance to candidates in a Legislative Council election;
- (f) prescribe the maximum amount of election expenses for the new DC FC; and
- (g) make consequential and incidental amendments.

Dr Hon Margaret NG’s proposed CSAs

The proposed CSAs

4. Dr NG has proposed various CSAs to the Bill, which may be divided into three groups, as set out in this paragraph and paragraphs 5 and 6 below. The first group of Dr NG’s CSAs seek to expand the electorate of certain FCs as follows:

- (a) the CSAs to amend clause 3 (definition of “relevant persons”) and add new clauses 6D, 6E, 6F and 6G seek to expand the electorate of four FCs¹ by abolishing corporate votes in the elections of these FCs and replacing them by votes of “relevant persons” such as the directors, partners, sole proprietor or members of senior management of a company;
- (b) the CSAs to amend clauses 3 (definition of “working persons”), 7, 8, 9, 32, 33, 34, 35 and 36 and add new clauses 5A, 5B, 5C, 6B, 6C, 6H, 6I, 8A, 8B, 9A and 36A

¹ These four FCs are commercial (first), commercial (second), industrial (first), and industrial (second).

seek to expand the electorate of 13 FCs² by abolishing corporate votes in the elections of these FCs and replacing them by votes of “working persons” of certain major industry groups; and

- (c) the CSA to add new clause 6A seeks to expand the electorate of the labour FC to include officers or members of the trade unions registered under section 17 of the Trade Unions Ordinance (Cap. 332) who are voting members of the trade unions.

5. Dr NG has also proposed CSAs to amend clauses 15 and 43 and to delete clauses 17 and 18 to the effect that:

- (a) persons who are eligible to stand for DC elections and persons with a substantial connection with the constituency may be nominated as candidates in the DC (second) elections; and
- (b) persons who are eligible to vote in DC elections may nominate candidates standing for DC (second) elections.

6. The remainder of Dr NG’s CSAs, i.e. to add a new clause 3A and to amend clause 12(3), seek to return the five new Members of the DC (second) FC, one from each of the five existing GCs.

The Administration’s comments

7. The Administration submits that Dr NG’s proposals set out in paragraph 4 above would easily multiply the number of FC electors to an electorate comparable to that of GCs and will result in a substantial increase in election-related expenditure due to a very significant increase in the cost in areas such as voter registration, postage of election materials, free mailing service for candidates and the electoral staff required for counting the FC votes. The Administration argues that under such an arrangement, it is likely that an additional amount comparable to holding a territory-wide election will be incurred for the FC elections. The Administration also points out that the total expenditure for the 2007 DC election was about \$154 million and submits

² These 13 functional constituencies are: agriculture and fisheries; insurance; transport; real estate and construction; tourism; finance; financial services; sports, performing arts, culture and publications; import and export; textiles and garment; wholesale and retail; information technology; and catering.

that Dr NG's CSAs would therefore entail the incurring of additional expenditure when compared with the proposals in the Bill. The Administration considers that the CSAs concerned have charging effect and are hence contrary to Rule 57(6) of the Rules of Procedure.

8. As regards Dr NG's CSAs set out in paragraph 5 above, the Administration submits that they will make the elections for the DC (second) FC comparable to direct GC elections. The Administration argues that the potential field of candidates will be extended from 412 elected DC members to approximately 3.2 million registered electors. This may lead to an appreciable increase in the number of lists of candidates standing for election and accordingly, this will incur significant election expenses. The Administration considers that the CSAs concerned have charging effect and are thus contrary to Rule 57(6) of the Rules of Procedure.

9. The Administration has not made any comment on Dr NG's CSAs set out in paragraph 6 above.

Dr Hon Margaret NG's response to the Administration's comments

10. Dr NG considers that the Administration's objection to her CSAs is misguided and should be rejected. Dr NG submits that by the creation of a DC (second) FC, the total number of electors of FCs will be equal to the total number of electors of GCs. Her CSAs do not and cannot enlarge the number of persons seeking to register as electors. Dr NG also submits that under the provisions of the Bill, an eligible FC voter can elect to register under whichever FC for which he is qualified or, if he is previously not qualified for any FC and is qualified under the new DC (second) FC, elect not to be registered for the new DC (second) FC. Her CSAs therefore do not, per se, add any administrative costs to what the provisions of the Bill already potentially give rise to.

11. As regards the potential field of candidates, Dr NG explained that the number of lists of candidates depends, mostly directly, on the number of seats, and beyond that, on the factual circumstances and political consideration obtaining at the time of each election, and her CSAs touch on neither. Dr NG points out that the provisions of the Bill potentially allow a maximum of 26 lists of candidates. There is therefore no ground in fact or in law to maintain that her CSAs threaten to exceed that.

My opinion

12. In her ruling on Dr LEONG Che-hung's CSAs to the Legislative Council (Amendment) Bill 1999³, my predecessor stated that expenses relevant to the elections for forming the Council "are already authorized by law, irrespective of what the constituencies may be which are to return members of the Council, or of the sizes of these constituencies". She ruled that "it is not appropriate to assess whether a CSA which proposes to increase the electorate of a functional constituency has a 'charging effect' solely on the basis of the number of electors it proposes to increase".

13. I consider that the same principle may be applied in the case of Dr Hon Margaret NG's CSAs. One of the purposes of the Bill, as set out in its long title, is to add 10 seats to the Legislative Council five of which are to be returned from the existing GCs and five from a new DC (second) FC to be added to the existing FCs and to make provision for the filling of the seats of such constituencies. Expenditure on areas such as voter registration, postage of election materials, free mailing service for candidates and the electoral staff required for counting the FC votes is already authorized by law, and the Administration should make provisions irrespective of changes in constituencies or the sizes of the constituencies. I am of the opinion that Dr NG's CSAs will not create a charge which is new and distinct, and hence they do not have charging effect within the meaning of Rule 57(6) of the Rules of Procedure.

Hon Andrew CHENG's proposed CSA

The proposed CSA

14. Mr CHENG's CSA seeks to amend section 18(1) of LCO, by adding a new clause 3A to the Bill to increase the number of GCs from five to six.

The Administration's views

15. The Administration submits that while Mr CHENG's proposed CSA is not contrary to Rule 57(6), it is contrary to Rule 57(4)(a). The Administration explains that the long title of the Bill provides, among

³ Ruling on Committee stage amendments proposed by Members to Legislative Council (Amendment) Bill 1999.

other things, that the Bill seeks to amend LCO to add 10 seats to the Legislative Council five of which are to be returned from the existing GCs and five from a new FC to be added to the existing FCs. The Administration argues that as Mr CHENG's CSA seeks to change the number of GCs stipulated under section 18(1) of LCO, it is outside the scope of the long title of the bill which sets out that the five new GC seats are added to the five existing GCs.

Hon Andrew CHENG's response

16. Hon Andrew CHENG submits that to determine whether certain CSAs are relevant to the subject matter of a bill, one should not merely look at its long title but should also study the Legislative Council Brief on the bill in order to understand its legislative intent. Mr CHENG considers that the legislative intent of the Bill is to implement, through local legislation, the passage by the Legislative Council of the motion put forward by the Government concerning the draft amendments to the method for the formation of the Council in 2012. Mr CHENG points out that according to that motion, the fifth term of the Legislative Council in the year 2012 shall be composed of 70 Members and that the composition shall be 35 Members returned by FCs and 35 Members returned by GCs through direct elections. Mr CHENG argues that as the motion did not mention how the additional five GC seats are to be returned, it is an issue to be dealt with by local legislation, which means that arrangement for electing the five additional GC seats is the subject matter of the Bill.

17. Referring to paragraph 11⁴ of the Legislative Council Brief on the Bill, Mr CHENG argues that the option presented by the Administration is that the number of GCs is to be retained at five and the number of seats for each of the five GCs is to be a number not less than five nor greater than nine. As he does not agree to this option, particularly the part on retaining five GCs, he has therefore put forward his CSA. For this reason, he considers his CSA to be relevant to the subject matter of the Bill.

⁴ The paragraph reads: "We have set out the proposed arrangements regarding the electoral methods for the 2012 LegCo election vide the earlier LC Paper No. CB(2)150/10-11 including the number of LegCo Members to be returned by GCs and FCs to be increased to 35 respectively and the number of GCs to be retained at five. We proposed that the number of seats for each of the five GCs is to be a number not less than 5 nor greater than 9."

My opinion

18. Rule 57(4)(a) of the Rules of Procedure provides that an amendment to a bill must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates. It is very clear that the subject matter of the Bill, as evident from its substantive provisions and the explanatory memorandum, is that as set out in the long title; the relevant part of which reads: “Amend the Legislative Council Ordinance to add 10 seats to the Legislative Council five of which are to be returned from the existing geographical constituencies”. As Mr CHENG’s proposed CSA seeks to increase the existing number of GCs from five to six, it is not relevant to the subject matter of the Bill and hence contrary to Rule 57(4)(a) of the Rules of Procedure.

Hon Paul TSE’s proposed CSAs

19. Hon Paul TSE’s CSA to amend clause 15 seeks to stipulate to the effect that a person eligible to stand for election in the DC (second) FC must satisfy, among other things, three more requirements i.e. not taller than five feet four inches, not earning more than \$10,000 a month, and not having an academic qualification higher than matriculation level.

20. Mr TSE has also proposed a CSA to amend clause 46 to remove the ceiling of \$6 million for election expenses that can be incurred at a DC (second) FC election by or on behalf of all the candidates in a nomination list.

The Administration’s comments

21. The Administration does not consider that Mr TSE’s proposed CSAs are contrary to Rule 57(4) and Rule 57(6) of the Rules of Procedure. The Administration, however, expresses serious doubts as to whether the restrictions proposed by Mr TSE can be regarded as reasonable restrictions under the Basic Law given that Article 26 of the Basic Law provides that “Permanent residents of the Hong Kong Special Administrative Region shall have the right to vote and the right to stand for election in accordance with law”.

Mr Paul TSE’s response

22. Hon Paul TSE submits that the Administration’s concern about his CSA to amend clause 15 goes to merits and that should not be a

procedural obstacle against the admissibility of the CSA.

My opinion

23. As President, I should not consider points of merit when making a ruling on the admissibility of the CSAs proposed by a Member under the Rules of Procedure. I accept Mr TSE's submission that the restrictions on height, monthly income and academic qualifications proposed in his CSA to amend clause 15 are points of merit. Mr TSE's CSA is admissible.

My ruling

24. I rule that:

- (a) all the CSAs proposed by Dr Hon Margaret NG are admissible;
- (b) Hon Andrew CHENG's proposed CSA is not admissible under Rule 57(4)(a) of the Rules of Procedure; and
- (c) all the CSAs proposed by Hon Paul TSE are admissible.

(Jasper TSANG Yok-sing)
President
Legislative Council

28 February 2011