

**President's ruling on Committee stage amendments to
the Communications Authority Bill
proposed by Dr Hon Margaret NG**

Dr Hon Margaret NG has given notice to move Committee stage amendments ("CSAs") to the Communications Authority Bill ("the Bill"), if the motion for the Second Reading of the Bill is agreed to at the meeting of the Legislative Council of 29 June 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 to respond to the Administration's comments. I also made reference to the advice given to me by Counsel to the Legislature.

Object of the Bill

2. According to the long title of the Bill, the object of the Bill is to "[e]stablish the Communications Authority; to transfer the functions of the Broadcasting Authority and the Telecommunications Authority to the Communications Authority; to dissolve the Broadcasting Authority; and to provide for incidental and connected matters".

Dr Hon Margaret NG's CSAs

3. Dr NG's CSAs seek to –
- (a) amend clause 4 of the Bill (to add subclause (1A)) to provide that the Communications Authority shall carry out its functions under the Ordinance (i.e. the Communications Authority Ordinance upon enactment of the Bill as an Ordinance) without interference from the Government; and
 - (b) amend the long title of the Bill to provide for the establishment of an independent Communications Authority.

The Administration's comments

4. The Administration considers that Dr NG's CSAs do not contravene Rule 57(4)¹ and Rule 57(6)² of the Rules of Procedure. However, the Administration objects to Dr NG's CSA to the long title of the Bill. In submitting that an amendment to the long title of a bill can be made only if it is necessary as a result of an amendment to the bill, the Administration relies on Rule 58(9)³ of the Rules of Procedure which provides that "[i]f any amendment to the title of the bill is made necessary by an amendment to the bill, it shall be made at the conclusion of the proceedings

5. The Administration further argues that the existing long title of the Bill is sufficient and needs no amendment to reflect the substance of Dr NG's CSA to clause 4 even if it is passed. Accordingly, the Administration argues, Dr NG's CSA to the long title is not necessary.

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

6. Dr NG submits that Rule 58(9) of the Rules of Procedure is procedural and does not purport to set a condition restricting amendments to the long title of a bill. Dr NG points out that there is a precedent that the long title of a bill was amended to reflect more clearly the objective of a bill and cites the CSA to the long title of the Mainland Judgments (Reciprocal Enforcement) Bill moved by the Secretary for Justice⁴ to reflect that the provisions of the bill implemented the terms of the

¹ Rule 57(4) of the Rules of Procedure provides, inter alia, 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.

² Rule 57(6) of the Rules of Procedure provides that an amendment, the object or effect of which may, in the opinion of the President, 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.

³ The term "title" in Rule 58(9) of the Rules of Procedure is interpreted to mean "long title".

⁴ Resumption of the Second Reading debate on the Mainland Judgments (Reciprocal Enforcement) Bill was held at the meeting of the Legislative Council of 23 April 2008.

Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region pursuant to Choice of Court Agreements between Parties Concerned made between the Mainland and the SAR authorities. Dr NG submits that there was no suggestion of that CSA to the long title being “made necessary” by any amendment to the bill.

7. Dr NG further argues that even if Rule 58(9) of the Rules of Procedure sets such a condition of restricting amendments to the long title, the condition is met as the objective of her CSA to clause 4 is to make clear that any Communications Authority proposed to be set up under the Bill must function independently, without interference from the Government. In her view, it is necessary to reflect this objective in the long title of the Bill if her CSA to clause 4 is passed.

Counsel’s advice and my opinion

8. Counsel to the Legislature advises that under Rule 50(3) of the Rules of Procedure, the long title of a bill should set out the purposes of the bill in general terms. The long title should cover everything in the bill⁵, and must accurately reflect its content⁶.

9. With regard to Rule 58(9) of the Rules of Procedure, Counsel considers that the Rule is not merely procedural. He advises that as a matter of parliamentary practice, the long title may be amended only if the bill has been so altered as to necessitate such an amendment⁷, or if amendments to the bill make that course appropriate⁸. In Counsel’s view,

⁵ Bennion, *Bennion on Statutory Interpretation*, Fifth Edition, at 727; McKay, *Erskine May Parliamentary Practice*, Twenty-third Edition, at 535.

⁶ Marleau and Montpetit, *House of Commons Procedure and Practice* (Canada), 2000 Edition, at 621.

⁷ Marleau and Montpetit, *ibid.*, at 658.

⁸ Erskine May, *ibid.*, at 536.

the long title of a bill is not subject to amendment at the Committee stage unless an amendment made to the provisions in the bill makes it necessary to do so or there are some other technical reasons such as to improve the language or to clarify a certain point which is within the scope of the bill⁹. In other words, there has to be a nexus, or a connection, between the CSA to the long title and one or more CSAs to the operative provisions of the bill which provides the basis for my deciding whether the CSA to the long title is made necessary for setting out the purposes of the bill as required by Rule 50(3) of the Rules of Procedure, which includes clarifying or improving the language used in the long title.

10. Counsel has also drawn to my attention the amendment moved by the Secretary for Justice to the long title of the Mainland Judgments (Reciprocal Enforcement) Bill during its passage through the Council in April 2008. When moving that amendment, the Secretary for Justice stated that the Administration had accepted the Bills Committee's proposal to amend the long title "[f]or the sake of clarity and to better reflect the objective of the Bill"¹⁰.

11. I note that the Administration in this case does not object to Dr NG's CSA to clause 4 of the Bill but takes issue with her CSA to the long title.

12. In this case, I consider Dr NG's two CSAs to be interrelated in that her CSA to the long title is intended to make clear the effect of her CSA to clause 4. Accordingly, I opine that Dr NG's CSA to the long title of the Bill does not offend Rule 58(9) of the Rules of Procedure and may be moved if her CSA to clause 4 is passed.

⁹ President's ruling of 10 July 2008 on Independent Police Complaints Council Bill, at para.69.

¹⁰ *Hong Kong Hansard*, Session 2007-08, at 6487.

My ruling

13. I rule that the CSA proposed by Dr Hon Margaret NG to the long title of the Bill is admissible and may be moved if her CSA to clause 4 is passed in accordance with Rule 58(9) of the Rules of Procedure.



(Jasper TSANG Yok-sing)
President
Legislative Council

27 June 2011