

President's ruling on closing the joint debate at the Committee stage of the Legislative Council (Amendment) Bill 2012

At the Council meeting of 16 May 2012, when the Council was in committee of the whole Council holding a joint debate on the clauses in and proposed amendments to the Legislative Council (Amendment) Bill 2012 ("the Bill"), I noted Members' sentiments on the progress of the joint debate which I also found to be much protracted. The joint debate started on 10 May 2012. By 4:30 am on 17 May 2012, as the meeting of 16 May 2012 continued to be held overnight, I noted that the joint debate had lasted for over 33 hours but I could not see any end to this debate due to the filibustering by a few Members. One of these Members, Hon WONG Yuk-man, made a declaration at the start of the joint debate of their filibustering on the Bill. In the 33 hours that followed, which spanned over seven meeting days, three Members persisted in making speeches: Hon WONG Yuk-man spoke for 20 times, Hon Albert CHAN spoke for 28 times, and Hon LEUNG Kwok-hung spoke for 27 times. These Members persisted in irrelevance or tedious repetition of their own or other Members' arguments in their speeches, resulting in my drawing to their attention on over 75 occasions the need to comply with Rule 45(1) of the Rules of Procedure ("RoP"). Upon the raising of a point of order by Dr Hon Philip WONG, I indicated to the Council that the debate should be about to conclude and that I was inclined to allow the two Members and the public officer proposing amendments to the Bill to give concluding speeches and then end the debate. In response to Dr Hon Margaret NG's request, I suspended the meeting to allow a private discussion to be held among Members before I made my ruling. The meeting was attended by me and some 30 Members coming from all parties and affiliations. I also had a separate meeting with Hon WONG Yuk-man and Hon Albert CHAN immediately following that meeting.

2. When the Council meeting resumed at 9:00 am, I gave my ruling as follows: Having heard Members' views and following discussions with them, I decided that I would invite the two Members and the Secretary for Constitutional and Mainland Affairs ("the Secretary"), who were movers of the proposed amendments to the Bill, to speak within the period up to 12:00 noon, at which time I would end the joint debate. In response to Hon Andrew CHENG's point of order, I agreed that I would also call on other Members to speak within the same period but priority would be given to those proposing amendments.

3. I agreed at the meeting that I would put my ruling into writing and provide the background and the considerations which had led to my ruling.

Background

4. The Bill was introduced into the Legislative Council (“LegCo”) for First Reading on 8 February 2012. The Bill consists of three clauses. Clause 1 deals with the short title and commencement. Clause 2 stipulates that the Legislative Council Ordinance is amended as set out in section 3. Clause 3 amends section 39 of the principal ordinance to the effect that a person who has resigned as a Member of LegCo is prohibited from standing for a by-election to be held within the six months after the resignation in the same term of office of LegCo. After the Second Reading of the Bill was moved, it was adjourned under Rule 54(4) of RoP. The Bill was then referred to the House Committee, which set up a Bills Committee to study it.

5. On 13 April 2012, the Bills Committee reported its deliberations to the House Committee (“HC”). Members noted that the Administration intended to resume the Second Reading debate on the Bill at the Council meeting of 2 May 2012 and raised no objection.

6. By the deadline for giving notice of amendment to the Bill, a total of 1 307 proposed Committee stage amendments (“CSAs”) were received - one from the Secretary which seeks to make a drafting improvement to clause 3 of the Bill, 74¹ from Hon WONG Yuk-man which seek to make improvements to the Chinese language used in the Bill, and 1 232 from Hon Albert CHAN, which can be grouped into six themes as follows:

- (a) that the disqualification does not apply if the resigning Member agrees to pay a certain percentage of the cost of the by-election;
- (b) that the disqualification does not apply if the Member has resigned because he is held in custody in a foreign country;
- (c) that the disqualification provision will expire after a certain period of time;
- (d) that the disqualification period is reduced from six months to a lesser period;
- (e) that the disqualification does not apply if the Member has resigned because he is diagnosed as suffering from a

¹ Hon WONG Yuk-man withdrew one of his 74 CSAs on 16 May 2012.

certain disease but is found later to have been wrongly diagnosed; and

- (f) that the disqualification does not apply if only a certain number of functional constituency/geographical constituency Members resign.

7. Hon WONG Yuk-man and Hon Albert CHAN had made it very clear that the purpose of their proposing such a large number of CSAs is to prolong the proceedings of the Committee stage of the Bill so as to force the Administration to shelve the Bill. However, as none of the CSAs proposed by them has, in my opinion, breached the relevant rules (i.e. Rule 57) of RoP, I ruled that all their 1 306 CSAs are admissible under RoP and may be moved to the Bill.

Joint debate on clauses 1, 2 and 3

8. The Second Reading debate on the Bill resumed at the Council meeting of 2 May 2012 and the motion for Second Reading was passed. The proceedings on the Bill then entered into the Committee stage. At the start of the Committee stage, Hon Audrey EU moved to adjourn the proceedings of the committee of the whole Council under Rule 40(4) but the motion was negated. At this juncture, Hon WONG Yuk-man declared that the filibuster would begin.

9. The committee of the whole Council considered all the three clauses and 1 307 proposed amendments in a joint debate. The repetitive and irrelevant speeches made by three Members in the filibuster effectively prolonged the proceedings, hence causing the mounting up of unfinished business of the Council standing over from previous meetings and cancellation of numerous committee meetings scheduled for those days when the Council needed to continue to meet because of this Bill. Without seeing any prospect of the joint debate coming to an end, I consulted Counsel to the Legislature on the power of the President (and as Chairman of the committee of the whole Council) in conducting meetings. I also consulted the Clerk to LegCo on the usual ways to end a filibuster in other jurisdictions. Details of the advice given to me are set out in paragraphs 10 to 19 below. In reaching my decision, I had borne in mind my duty to strike a balance between the protection of the rights of individual Members to speak in the Council and the efficient conduct of business of the Council as a law making institution.

Functions and Powers of the President to conduct Council meetings

10. As President of LegCo, I understand that I have the duty to ensure the efficient conduct of meetings. There is no procedure in RoP to deal with filibustering. Under Rule 38 of RoP, a Member may not speak more than once on a question, but committee of the whole Council is one of the excepted occasions. If any Member(s) persists in irrelevance or tedious repetition of arguments in committee of the whole Council, the Member can only be directed to discontinue under Rule 45(1) of RoP.

11. Regarding the power of the President to conduct meetings, Counsel to the Legislature has drawn my attention to the powers and functions of the President of LegCo under Article 72 of the Basic Law (“BL”) which includes to preside over meetings and to exercise other powers and functions as prescribed in RoP of LegCo. BL 75 provides that RoP of LegCo shall be made by LegCo on its own, provided that they do not contravene BL. I was advised by Counsel that as a matter of principle a person who is given the power and function to preside over a meeting he should also be vested with powers which are reasonably incidental to and necessary for the efficient conduct of business at the meeting unless there are clear provisions which circumscribe those incidental powers. However, each situation has to be considered on its own merits when it becomes necessary to invoke these incidental powers. Counsel also drew my attention to Rule 92 of RoP which suggests that, should I consider invoking any powers not provided for in RoP, I may consider practice and procedure of other legislatures for guidance before I decided what would be reasonably appropriate for LegCo.

12. I understood from the above advice that should I have difficulty in conducting a LegCo meeting in a reasonably efficient manner in accordance with BL 72 and where I considered that there was a matter which should have been provided for in RoP but had not been so provided, it would be for me to decide what practice and procedure should be followed. When making the relevant decision, I may be guided by the practice and procedure in other legislatures which are relevant to the matter under my consideration if I should think fit.

13. Counsel has also advised me that although there are no specific provisions on how that decision should be arrived at, it would be advisable for me to follow the normal principles of fairness which apply to the exercise of statutory powers. These principles include the taking into account only of all relevant considerations, but not those which are not relevant. What is relevant and what is not will depend on the particular circumstances before me, but there are two important principles

which should help me make that judgment. They are my power and function to preside at a meeting which should be carried out reasonably efficiently but without acting contrary to RoP, and my duty to protect the interests of Members, especially those in the minority.

14. Of course, I always bear in mind the pledge that I made when I ran for the office of President of LegCo that I shall act impartially, and that I would strike a balance between maintaining order in meetings and the right of all lawmakers to speak when performing my duties as the President of LegCo.

15. Hon Alan LEONG has asked me to explain what the word “matter” in Rule 92 of RoP has meant to me when I applied this rule in my work. I must admit that I did not have the opportunity to study the scope of the word “matter” in Rule 92, nor had I sought specific advice of Counsel to the Legislature on the meaning of this word before I made my ruling on 17 May 2012. I recall that on two occasions recently, I had been advised about the application of Rule 92: one was on the procedure adopted for holding joint debates; and the other in the course of considering the admissibility of the 1 306 CSAs to the Bill as proposed by Hon WONG Yuk-man and Hon Albert CHAN. The procedure we now adopt for holding joint debates is not provided for in RoP but has been followed and developed over the years by practice as decided by former Presidents. In the latter case, when considering the admissibility of the CSAs proposed by the two Members, I had studied how far “an amendment” in the context of Rule 57(4)(d) where it is provided that “[an] amendment which is in the opinion of the Chairman frivolous or meaningless may not be moved” could also apply to “an amendment which forms part of a series of amendments” or “a series of amendments”, I noticed that in Canada, “a series of motions” appears alongside with “a motion”. That to me was a clear example that if it was the intention of RoP to apply Rule 57(4)(d) to “a series of amendments” it would have so provided accordingly. I agreed with the advice that it would not be right to expand the clearly defined scope of application of Rule 57(4)(d) to include “a series of amendments” by invoking Rule 92.

16. On the question of whether Rule 92 of RoP also applies to the Chairman of the committee of the whole Council, I note that under Rule 3 of RoP, the President, when present at a meeting of a committee of the whole Council, shall be the Chairman of the committee of the whole Council. I therefore consider that while I am chairing a meeting of a committee of the whole Council, the power given to me as President under Article 72(1) and thereby Rule 92 of RoP also applies.

Practice and procedure to deal with filibustering in other legislatures

17. The Clerk to LegCo has referred to me a paper presented to the Committee on Rules of Procedure (“CRoP”) for its meeting on 8 May 2012. The paper entitled “Handling of voluminous amendments to bills in selected overseas Parliaments” provides information on the relevant rules and practices of the parliaments in the United Kingdom (“UK”), Canada, Australia and New Zealand for the purpose of assisting members of CRoP in considering whether, and if so how, a situation where the number of CSAs proposed by Members is so large that it is creating practical difficulties in dealing with these amendments should be dealt with.

18. I note that the measures to handle voluminous amendments in these places cannot be applied by me without adaptation as the Speakers of these parliaments have the power to select amendments, which I do not have under RoP. Other measures such as closure motions to curtail debates are also not applicable as such motions, if allowed to be moved without the Chair being given the power not to allow such motions to be moved, may lead to abuse and may deprive Members in the minority of the opportunity to speak in the Council. Allocation of time orders (commonly known as “guillotines”) have been used by the UK Government since the 1880s to speed up a bill’s passage when it is unable to reach voluntary agreements through the usual channels² or when the Opposition engaged in what the Government perceived to be “blocking” tactics. I am aware of the different political structure in UK and a direct transfer of the concept to the Hong Kong setting may not be appropriate. These overseas practices may be useful for our future reference. I am aware that CRoP is currently studying the procedure of closure motions but it also appears to me that consensus on the subject is not likely to be achieved within the short timeframe I have in dealing with the present situation, noting the escalating time pressure to complete the legislative process of the large number of outstanding bills and motions before the Council prorogues on 18 July 2012.

19. The Clerk to LegCo had the benefit of seeking advice from Sir Malcolm JACK, former Clerk to the House of Commons of UK who was conducting a series of seminars for Members and staff of LegCo during the weeks when the filibustering was in action in the Council. Sir Malcolm JACK also found the situation most difficult as the provisions in our RoP do not cater for filibustering and considered that the ultimate

² The term “usual channels” describes the working relationship of the whips from the different parties and the leaderships of the Government and Opposition parties. The term refers to arrangements and compromises about the running of parliamentary business that are agreed behind the scenes.

decision on how to deal with the situation rest with the President, who has the duty to protect the Legislature as an institution.

My opinion

20. Having taken into account the advice given to me by Counsel to the Legislature and Clerk to LegCo, I am convinced that I have the power to conduct the meeting of the committee of the whole Council in a manner which ensures the efficient conduct of business and is also consistent with the general principles of protecting Members' rights to speak in the Council. This power given to me comes from BL 72, which includes RoP.

21. In curtailing a protracted debate, I consider that I must be satisfied that:

- (a) a wide and protracted debate has been allowed based on a liberal reading of rules on amendments;
- (b) all Members have been given the opportunity to speak; and
- (c) it is clear that certain Members will not stop the filibuster and will thereby bring Council business to a standstill.

In this respect, I consider that I have adopted the most tolerant way to allow those Members who took part in the filibuster to continue to speak and protract the debate to over 33 hours. I am convinced that there are reasonable grounds for me to put an end to the joint debate.

22. In determining the manner to end the joint debate at the Committee stage of the Bill, I consider it necessary to allow all Members who have not yet had the chance to speak at Committee stage to have the opportunity to speak, and to allow a reasonable timeframe for those Members who propose amendments to the Bill to round up their arguments. As regards the timeframe for the concluding speeches, it was my original intention to take into account the views of Members at the moment when the decision to end the debate was to be made.

Ruling made at the Council meeting of 16 May 2012

23. I have been reminded by Counsel to the Legislature and Clerk to LegCo of the need to take into account the views of Members before putting in place any arrangements which are not provided for in RoP and

which may have an impact on the future operation of the Council. I agree that this is the best way to exercise the power given to me under Rule 92 of RoP if circumstances permit.

24. The Council meeting of 16 May 2012 has developed to a point that, in my opinion, did not allow me to stall a decision from the chair any further. The raising on a point of order by Dr Hon Philip WONG and his proposal to stop the debate and put the clauses and amendments to vote at 4:30 am on 17 May 2012 made it necessary for me to come to a decision on how the protracted debate should be ended. I am grateful to the Members who attended the private meeting held during the suspension of the meeting in that morning for their views on the matter. It was through the open and frank dialogue with these 30 Members (who came from various political parties and affiliations in the Council) that I had come up with the final three-hour debating time for the Members and the Secretary to speak on the clauses and amendments before closing the debate. No objection was heard at the meeting. After this meeting, I had another private meeting with Hon Albert CHAN and Hon WONG Yuk-man to explain the reasons for my decision.

25. I understand that my action to end the filibuster at the Committee stage of the Bill at the Council meeting of 16 May 2012 has caused Members' concern. I believe that my decision to do so has achieved my objective to strike a balance between safeguarding Members' right to express their views and ensuring the smooth conduct of Council meetings. There is definitely room for improvement in the way I have consulted Members on the best way forward in dealing with matters not provided for in RoP. I understand that CRoP is currently conducting a study on the procedure to deal with filibuster and the President's power to invoke Rule 92. I am happy to attend a meeting of CRoP to exchange views with CRoP members as well as other Members on these subjects.

(Jasper TSANG Yok-sing)
President
Legislative Council

22 May 2012