

**President's Rulings on
Committee Stage Amendments proposed by Members to
Provision of Municipal Services (Reorganization) Bill**

Introduction

By the deadline for notice, three Members viz. Hon Ambrose CHEUNG, Hon LEE Wing-tat and Hon Fred LI, submitted a total of six sets of proposed Committee Stage amendments (CSAs) to the Provision of Municipal Services (Reorganization) Bill (the Bill).

2. Under the Council's Rules of Procedures (the Rules) made in pursuance of Article 75 of the Basic Law, I am required to rule whether the proposed CSAs are in order. Rule 57 of the Rules, which is the relevant rule, is reproduced in the **Appendix**.

3. The Secretary for Constitutional Affairs (the Secretary) who introduced the Bill has been asked to offer his views on the proposed CSAs, and the Members concerned have had the opportunity to respond to the Secretary's views, in particular those that relate to Rule 57.

Views of the Secretary for Constitutional Affairs on the CSAs in relation to Rule 57

A. Mr Ambrose CHEUNG's two sets of proposed CSAs concerning his so-called one-Council-one-Department arrangement

4. Mr Ambrose CHEUNG's proposed CSAs primarily seek to establish one statutory municipal council (called the Urban Council) with the Director of Urban Services and the Urban Services Department as its principal executive officer and executive agency. Among other things, the CSAs make provisions relating to the composition of the Urban Council; the method of electing members of the Urban Council; and the functions and powers of the Urban Council.

5. The Secretary considers that the proposed CSAs are beyond the scope of the Bill. The Bill is a legislative initiative proposing specifically that Government take legal responsibility for the provision of municipal services in place of the two provisional municipal councils. Since the removal of all municipal services functions from the two councils is integral to the objects of the Bill, it must follow that amendments to restore the major part of the two councils' functions to one Urban Council is in legislative terms a reversal of the principle of the bill, not merely an amendment as to the Bill's details. It goes far beyond the accepted meaning of an amendment dealing with "details" of the Bill. Such amendments relate directly to the

"principles" of the Bill. In the Secretary's opinion, under Rule 56(1), the function of the Committee of the whole Council is to discuss the "details" of the Bill, not its "principles". While the "One Urban Council" proposal can be debated at the Second Reading, it is not in order for the "principles" of the Bill to be discussed at the Committee Stage, those principles having been debated and approved during Second Reading.

6. The Secretary also considers that the proposal has a charging effect within the meaning of Rule 57(6) of the Rules. According to the Secretary, under the Bill the two existing provisional municipal councils will cease to exist upon repeal of the respective pieces of legislation which have been providing for their operation. Any funds (currently the two councils are supported by government rates collected on properties) previously authorized by the legislation will revert back to the general revenue. Therefore the new Urban Council, if it is to be created, will require a new and distinct appropriation of expenses to support its operations.

7. In addition, the proposals have a charging effect on public money because they involve new purposes and new expenses not currently covered by the Provisional Urban Council Ordinance. In particular, the CSAs provide for a general election of members to the Urban Council by all eligible and registered voters in Hong Kong. Present law does not provide for members of the Urban Council to be elected. Under the circumstances, the present proposals comprise a new and distinct purpose and any funds required would constitute an additional and distinct head of expenses.

8. Lastly, the Secretary has also commented that many of the proposed CSAs are either unintelligible or meaningless, e.g. those on the proposed Urban Council Appeal Board (proposed to Schedule 4); the Liquor Licensing Board (proposed to Schedule 5); assistants to succeed hawker licenses (proposed to Schedule 3); and membership of the Board of the Hong Kong Arts Centre, the Hong Kong Arts Development Council, and the Hong Kong Sports Development Board (proposed to Schedule 7), mainly because of the lack of definitions.

B. Mr LEE Wing-tat's set of proposed CSAs also concerning the so-called one-Council-one-Department arrangement

9. Mr Lee Wing-tat's proposed CSAs are essentially the same as those proposed by Mr Ambrose CHEUNG. Their main differences lie in the proposals concerning such matters as the composition of the Urban Council and the procedure for election of members to this Council.

10. For the same reasons as those in respect of Mr CHEUNG's CSAs, the Secretary is also of the opinion that they are beyond the scope of the Bill and have a charging effect. As a whole, they are also unintelligible.

C. Mr LEE Wing-tat's set of proposed CSAs concerning the English name of the "Food and Environmental Hygiene Department" proposed in the Bill

11. Mr LEE Wing-tat's CSAs seek to amend the name to "Food and Environmental Health Department", and also the English name of the proposed "Director of Food and Environmental Hygiene " to "Director of Food and Environmental Health".

12. The Secretary considers the CSAs to be inconsistent and incompatible with the CSAs relating to Mr LEE's proposals regarding the new Urban Council.

D. Mr LEE Wing-tat's other proposed CSAs to the Bill

Rental Adjustment of Public Market Stalls (Schedule 3)

13. The CSAs seek to provide different methods for the adjustment of public market stall rentals, based on either the "Fair Market Rent" assessed by the Commissioner of Rating and Valuation or by making reference to the changes in the Consumer Price Index (A) prior to the renewal of lease.

14. The Secretary considers that the CSAs have a charging effect, as the proposal that the actual amount of rent to be paid shall be 30% less than the amount calculated by Mr LEE's formulae will lead to a reduction in the future revenue. Moreover, the criteria for calculating rental adjustments are confusing and the various provisions and their relationship are unclear and difficult to understand.

Government's or Director's liability for loss of or damage to articles

15. The CSAs seek to repeal the Government's exemption from the liability for loss of or damage to any article above , inside or near any grave in a public cemetery.

16. The Secretary considers that the CSAs have a charging effect since they expose the Government to a potential liability even where no negligence on the part of the Government or its employees is involved.

E. Mr Fred LI's proposed CSAs to the Bill

17. Mr LI's CSAs relate mainly to the provision of a right to appeal to the Municipal Services Appeals Board (proposed in the Bill) against the decision to adjust market stall rentals; a right to object to an application for adding any facility which is directly relating to the burning of human remains and a right of appeal against decisions of the Authority.

18. The Secretary has not offered views on the CSAs in the context of Rule 57.

Members' responses to the views of the Secretary

19. **Mr Ambrose CHEUNG** has made the following comments:

(a) **Scope of the Bill**

The subject matter of the Bill is the reorganization of municipal services and the amendments are relevant to this subject matter as they relate to what he considers to be a better and alternative structure for the provision of municipal services. The principles and details of the CSAs can be discussed at the Committee Stage.

(b) **Charging Effect**

The "One Urban Council" proposal is not a new and distinct purpose. It represents a continuity of the existing structure. If the proposal is supported by the Legislative Council, the Provisional Regional Council will cease to exist while the Urban Council will continue with reduced functions though incorporating the Regional Council area, as the responsibility for food safety matters will be transferred to the Government.

Moreover, the composition of the "One Urban Council" is derived fundamentally from the pre-1997 municipal councils' structure with general election of members, representatives from distinct boards and the Heung Yee Kuk. The intention of the two Provisional Municipal Councils Ordinances was to provide for a smooth transition beyond 1997 until such time when new elections can take place.

No additional and increased expenses will be incurred by the "One Urban Council". Funding can continue to come from rates and fees and charges. The streamlined structure will result in substantial savings in public expenditure.

(c) **Intelligibility**

In view of the complexity of the Bill, there may still be minor gaps. But these can be dealt with by the Chief Executive in Council making consequential, transitional and savings provisions under the Bill. There has been insufficient time to prepare the CSAs as the Administration has imposed an unfair and impossible time frame for Members.

20. **Mr LEE Wing-tat** has made the following comments on the Secretary's views on the proposed CSAs relating to "one-Council-one-Department".

(a) **Scope of the Bill**

It is clear the Bill is doing much more than a simple transfer of services. It is actually reorganizing the services currently provided by the two provisional municipal councils. Allowing Government departments to

entirely take over the responsibilities is one option, the proposed CSAs provide an alternative — creating a new Urban Council with some duties regarding food safety being taken up by Government departments.

The CSAs are therefore within the scope of reorganizing municipal services, which is the apparent theme of the Bill.

(b) **Charging Effect**

When deciding whether a CSA will incur new expenses, one should look to the existing Ordinance for comparison. Under the Provisional Urban Council Ordinance (Cap. 101) and the Provisional Regional Council Ordinance (Cap. 385), the term of the provisional municipal councillors shall not end later than 31 December 1999. But that does not mean the two municipal councils automatically cease to exist and their funds revert to the general revenue. The new Urban Council proposed in the CSAs will only use the existing funds already authorized by legislation to the two provisional municipal councils. The structure will not require any new or distinct appropriation of expenses to support its operation.

The Administration ignores the background and history against which the Provisional Urban Council Ordinance was drafted and passed. The main body of the Provisional Urban Council Ordinance was brought forward from the Urban Council Ordinance which had existed before the handover, creating a provisional body to assume the powers and duties formerly undertaken by the Urban Council. Therefore, the Provisional Urban Council Ordinance was intended to provide for continuity of the previous Urban Council Ordinance.

It is clear that elections for the municipal councils had existed before the handover and are expected after the handover. Its absence in the Provisional Urban Council Ordinance only explains arrangements for a transitional period. Therefore, the general election proposed under the CSAs will only take up funds already authorized and does not involve any new expenses.

The aim of the CSAs is to reorganize services currently provided by the two provisional municipal councils. Thus, when looking to the funds authorised, one must look to the total sum currently authorised to the Provisional Urban Council and the Provisional Regional Council. No increased expenditure is needed to sustain the services of the new Urban Council proposed in the CSAs.

21. **Mr LEE Wing-tat** has also made the following comments on the Secretary's views on his other proposed CSAs:

(a) **Rental Adjustment of Public Market Stalls**

The Administration should recognise that, at present, funds generated from public market stalls rent do not go to the general revenue but form parts of the income of the two municipal councils. Therefore, no matter whether the funds generated from public market stall rents grow or shrink, it bears no relation to the general revenue.

(b) **Government's or Director's liability for loss of or damage to articles**

The potential liability as pointed out by the Administration is subject to loss or damage to articles placed above, inside, near or in the vicinity of any grave in a public cemetery. If the Administration takes enough precautions against these happenings, no extra liability or expenses would be incurred by the Government. There is no direct relationship between the CSA and charging effect.

Points for consideration

The question of scope of the Bill

22. The long title of the Bill states that it is to provide for the provision of municipal services by the Government; to repeal the Provisional Regional Council Ordinance and the Provisional Urban Council Ordinance; to make incidental and supplemental and connected provisions, including the vesting of property, rights and liabilities of the two Councils in the Government and the transfer of their functions and to make consequential and related amendments to enactments.

23. The Secretary's view that Mr CHEUNG's and Mr LEE's proposed CSAs to establish the "one-Council-one-Department" system are beyond the scope of the Bill appears to be based on his understanding of Rule 56(1) which has not previously been raised in this Council as a ground for objections to proposed CSAs.

Rule 56(1) states: -

"Any committee of the whole Council or select committee to which a bill is committed shall not discuss the principles of the bill but only its details."

To this I should add, for completeness in order to have a proper understanding of the entire Rule which consists of two subrules, the second limb which states-

"Any such committee shall have power to make such amendments therein as they shall think fit, provided that the amendments, including new clauses and new schedules, are relevant to the subject matter of the bill."

24. The key clauses of the Bill, namely clauses 3 and 4, leave no doubt that the objectives of the Bill are to achieve what is stated in the long title as quoted in paragraph 22 above.

25. I also note the clear wording in the first three lines of paragraph 1 of the Explanatory Memorandum which stipulated that:

"The main object of this Bill is to transfer the functions presently exercised by the Provisional Regional Council and the Provisional Urban Council to the Government to be exercised by specified public officers, or to statutory bodies."

26. All these have left me with no doubt that the main principles of the Bill are:

- (a) to repeal the Provisional Regional Council Ordinance and Provisional Urban Council Ordinance;
- (b) to provide the legislative framework needed for requiring the provision of municipal services by the Government and not any other bodies.

In my view, "reorganization" in the short title of the Bill refers to reorganization within Government for the purpose of providing municipal services.

27. Since the removal of all municipal services functions from the existing provisional municipal councils is integral to the objects of the Bill, it follows that amendments seeking to restore the substantial part of the legal concept of having municipal councils independent of Government to perform municipal services functions go to the fundamental principles of the Bill rather than its details.

28. As laid down in Rule 56(1), the functions of the Committee of the whole Council is to discuss the details of the Bill, not its principles. It follows that the CSAs for establishing a "one-Council-one-Department" model are out of order for being beyond the scope of the Bill.

29. I have noted Hon Ambrose CHEUNG's argument that Rule 56(2) permits any amendment to a bill provided that the amendment is relevant to the subject matter of the bill. In my view, the requirement of relevance to the subject matter of the bill should be applied consistent with the requirement that an amendment has to be within the scope of the Bill. The same expression in Rule 57(4)(a) should likewise be so applied.

30. As an example, if there was a bill which seeks to abolish a legislative scheme for raising levy in respect of certain activity by repealing all the operative provisions in an Ordinance, an amendment seeking to revise the rate of levy would be beyond the scope of that bill.

31. The "one-Council-one-Department" proposal is certainly an appropriate subject matter for debate at Second Reading. If the Council is persuaded, it could result in the Bill being defeated at second reading vote. However, it would be out of order for the Committee of the whole Council to discuss the CSAs in question for reason that they are beyond the scope of the Bill.

Charging effect

The proposed new Urban Council

32. The two existing provisional municipal councils have been in existence by virtue of the two respective Ordinances that the Bill now seeks to repeal, among other things. The members of these councils are all appointed and no election has been held for the selection of these members. The current source of funding of the councils is from government rates authorised by existing legislation.

33. Both Mr CHEUNG's and Mr LEE's CSAs seek to propose a new Urban Council with its geographical coverage and functions being quite distinct from those of the two councils. Its funding will require a new and specific appropriation from the general revenue, as the moneys for the discharge of these functions cannot come from those previously authorised for the two municipal councils under the existing legislation. This imposes a real obligation on the Government to carry out the duties required by the CSAs if they are approved. Moreover, both of the respective proposals in the CSAs provide, in the year 2000, for a general election of members of the new Urban Council by all registered voters in Hong Kong. If either one is approved, it will oblige the Government to expend moneys from the general revenue for conducting the elections and related activities. It is certainly unrealistic to assume that the conduct of this kind of elections may not incur the use of public funds.

Rental Adjustment of Public Market Stalls

34. The CSAs are proposed separately from those that Mr LEE submits in regard to the new Urban Council. The Bill, as I have agreed earlier on, seeks to create a new regime, including the funding arrangements for the better control over the use of the markets including the authority to receive and adjust rentals, which is currently vested in the two existing municipal councils. How the rentals should be adjusted in the future under the new arrangement is open to suggestions and discussions by the legislature. A charge is not imposed by the CSAs on the Government's general revenue which has hitherto not received any income from the market stalls.

Government's or Director's liability for loss of or damage to articles

35. The CSA seeks to repeal section 9 of the Public Cemeteries Regulation so that the Government or Director would not be exempted from the liability for loss of or damage to any article which is placed above, inside, near or in the vicinity of any grave in a public cemetery. Under the Bill, the Director for Food and Environmental Hygiene would have the management and control of public cemeteries. The Administration argues that the CSA has a charging effect "since it exposes the Government to potential liability even in a scenario which do (sic) not involve negligence on the part of the Government or its employees". Mr LEE argues that "if the Administration has taken enough precautions against these happenings [of loss or damage] no extra liability or expenses would be incurred on the Government". I have been advised by the Counsel to the Legislature that even if the exemption was removed, it would be very unlikely that Government or the Director would be held liable for the loss or damage in a scenario which does not involve some negligence on the part of the Government or its employees. I am of the view that such alleged potential liability is too remote for the purpose of considering possible charging effect of the CSA because it would be unlikely that liability would result from anything which is beyond the control of the Administration.

Intelligibility of proposed CSAs

36. The Secretary considers that many of the Members' proposed CSAs are unintelligible and should be struck out under Rule 57(4)(c), (d) and, where the Chinese and English versions are so at variance as to make the meaning and intention incomprehensible, Rule 57(4)(e). I agree and have ruled that some of the CSAs are out of order under these respective subrules. However, where the intentions of the CSAs are clear and can be made comprehensible by some technical adjustments, I have allowed these to be admitted.

Rulings

37. On the basis of the considerations discussed above, I rule that :-

- (a) The CSAs proposed by Mr Ambrose CHEUNG and Mr LEE Wing-tat relating to the "one-Council-one-Department" arrangement are outside the scope of the Bill. They also have the effect of charging the revenue and other public moneys (Rule 57(6)). As Mr LEE has advised the Clerk in writing that he wishes these CSAs to be considered as a package, I assume he does not wish to move those CSAs in the package that do not have a charging effect.
- (b) Mr Ambrose CHEUNG has earlier advised the Clerk that if his "one-Council-one-Department" proposal is ruled out of order, he would still wish to move some of the CSAs that may be admitted independently. However, Mr Ambrose CHEUNG may not move his CSAs relating to

sections 327 and 617 of Schedule 3 and section 8A of Schedule 5, as they are unintelligible (Rule 57(4)(c) and (e)). He may move his CSAs relating to section 6 of Schedule 5, and sections 60, 104 and 128 of Schedule 7.

- (c) Mr LEE Wing-tat may move his CSAs relating to Schedule 3, regarding rental adjustment of public market stalls, and those others that do not fall foul of Rule 57.
- (d) Mr LEE may move his CSAs relating to section 559 of Schedule 3, regarding Government's liability for loss of or damage to articles.
- (e) Mr Fred LI may move all of his CSAs as they do not offend Rule 57.

(Mrs Rita FAN)
President
Legislative Council

29 November 1999

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Rule 57 of the Rules of Procedures

57. Amendments to Bills

(1) The provisions of this Rule shall apply to amendments proposed to be moved to bills in committee of the whole Council, in a select committee, and on recommitment.

(2) Notice of amendments proposed to be moved to a bill shall be given not less than 7 clear days before the day on which the bill is to be considered in committee; and except with the leave of the Chairman no amendment of which notice has not been so given may be moved to a bill.

(3) The provisions of Rule 30 (Manner of Giving Notice of Motions and Amendments) shall apply to notice of amendments to bills with the substitution of the word “Chairman” for “President” in subrule (3) of that Rule.

(4) The following provisions shall apply to amendments relating to bills:

- (a) An amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates.
- (b) An amendment must not be inconsistent with any clause already agreed to or with any previous decision of the committee upon the bill.
- (c) An amendment must not be such as to make the clause which it proposes to amend unintelligible or ungrammatical.
- (d) An amendment which is in the opinion of the Chairman frivolous or meaningless may not be moved.
- (e) Where an amendment is proposed to be moved to a bill presented in both official languages the amendment shall be made to the text in each language unless it is an amendment that clearly affects the text in one language only. But an amendment which creates a conflict or discrepancy between the text in one language and the text in the other may not be moved.

(5) If an amendment refers to, or is not intelligible without, a subsequent amendment or schedule, notice of the subsequent amendment or schedule must be given before the first amendment is moved so as to make the series of amendments intelligible as a whole.

(6) An amendment, the object or effect of which may, in the opinion of the President or Chairman, be to dispose of or charge any part of the revenue or other public moneys of Hong Kong shall be proposed only by -

- (a) the Chief Executive; or
- (b) a designated public officer ; or
- (c) a Member, if the Chief Executive consents in writing to the proposal.