

**President's ruling on
Hon LEE Cheuk-yan's proposed resolution under the
Pneumoconiosis (Compensation) Ordinance Cap. 360**

Hon LEE Cheuk-yan has given notice to move a proposed resolution under the Pneumoconiosis (Compensation) Ordinance at the Council meeting to be held on 14 June 2000. The proposed resolution seeks to raise the level of compensation for bereavement under Part V of the First Schedule of the Ordinance from \$100,000 to \$150,000. Under section 40 of the Ordinance, the Legislative Council may by resolution amend any monetary amount specified in the First Schedule.

The Administration's view

2. The Secretary for Education and Manpower, who has been asked to offer his views on the proposed resolution, has commented that the proposed resolution has a charging effect as described in Rule 31 of the Rules of Procedure, for the reasons stated below.

3. The Secretary claims that raising the amount of compensation for bereavement entails new and distinct expenditure not within the previously enacted purposes of expenditure. A charging effect therefore results regardless of whether a consequential increase in the levy is required. Moreover, increasing the compensation for bereavement will have implications on the Pneumoconiosis Ex-Gratia Scheme funded by the Government to provide benefits to those pneumoconiotic persons who were diagnosed before 1981 and not eligible for compensation under the Ordinance. As it is Government policy to revise the level of compensation under the Ex-Gratia Scheme in step with the revision of levels of compensation under the Ordinance, if the proposed increase in compensation for bereavement is passed the Government will be required to inject public money into the Ex-Gratia Scheme.

4. Furthermore, the Secretary argues that although the Pneumoconiosis Compensation Fund is a statutory fund and not the revenue of the Government, section 27(1)(b) of the Ordinance includes any moneys (which are from the public fund) provided by the Government for the purposes of the Fund. An increase in the compensation payment may deplete the Fund and require legislation to increase the rate of levy. Legislation to impose or increase the levy is a charge upon the public and must be authorized by legislation which is either demanded or approved by the Government.

Ruling

5. The effect of Mr LEE's proposed resolution is the same in material terms as the proposed amendment on the same subject matter which he intended to move in July 1998. In relation to that proposed amendment, I ruled that it did not have a charging effect within the meaning of Rule 31. The reasons for that ruling are still valid and are applicable to the proposed resolution I am considering now. I do not intend to repeat them here.

6. It is necessary, however, to address two points that the Secretary has raised, viz. that raising the amount of compensation for bereavement entails new and distinct expenditure not within the enacted purposes of expenditure, and that a levy or an increase of levy for a statutory fund is a charge upon the public and must be authorized by legislation which is either demanded or approved by the Government. As regards the first point, in my opinion raising the level of compensation does not extend the purpose of paying compensation for bereavement which is the only purpose of the provision in Part V of the Schedule. The second point raised by the Secretary could stand only if the Pneumoconiosis Compensation Fund was part of the General Revenue. However, levies collected under the Ordinance go straight into the Fund, not the General Revenue. It should be clear to the Secretary that, for the purpose of the President's rulings in relation to Rule 31, it is the effect of a legislative proposal on the General Revenue that matters, not its effect on a levy which is not the Government's revenue.

7. I rule that Mr LEE may move his proposed resolution as it does not have a charging effect within the meaning of Rule 31 of the Rules of Procedure.

(Mrs Rita FAN)
President
Legislative Council

9 June 2000