

立法會
Legislative Council

LC Paper No. LS101/06-07

**Paper for the Bills Committee on
Statute Law (Miscellaneous Provisions) Bill 2007**

At its meeting on 16 June 2007, the Bills Committee discussed the effect of not passing Part 3 of the Bill and the issue of relevance of amendments. This paper sets out the background information to assist members.

The effect of not passing the proposed amendments in Part 3 of the Bill

2. Part 3 of the Bill concerns with proposed repeal of references to “(ordre public)” in the Societies Ordinance (Cap. 151) (“SO”) and the Public Order Ordinance (Cap. 245) (“POO”). The proposed repeal seeks to give effect to the judgment of the Court of Final Appeal (“CFA”) in *HKSAR v LEUNG Kwok-hung and others* (FACC Nos. 1 & 2 of 2005). In that case, the CFA held that the discretion of the Commissioner of Police (“Commissioner”) under the POO to restrict the right of peaceful assembly for the statutory purpose of “public order (ordre public)” plainly does not give an adequate indication of the scope of that discretion. Accordingly, the CFA held that the Commissioner’s discretion in relation to the purpose of “public order (ordre public)” in sections 14(1), 14(5) and 15(2) of the POO is unconstitutional and that the appropriate remedy is the severance of public order (in the law and order sense) from “public order (ordre public)” in those provisions. In the judgment, it was also stated that after severance, the Commissioner’s discretion in relation to public order satisfies the constitutional requirements of “prescribed by law” and necessity and is constitutional.

3. Members may note that, as a matter of law, the term “(ordre public)” in sections 14(1), 14(5) and 15(2) of the POO is invalid and void after the handing down of the CFA’s judgment. Thus, there would be no effect in law even if they remain in the statute book in case Part 3 of the Bill was not passed.

4. In respect of other provisions of the POO and the SO included in the proposed amendments in Part 3 of the Bill, they would remain valid as they were not involved in the CFA’s case. Thus, the term “(ordre public)” in those provisions would still be valid under the existing law if Part 3 of the Bill was not passed in this exercise, although they might be similarly held to be unconstitutional by a court if a case arises.

Amendments as a result of a comprehensive review of the POO

5. In the meeting, members also discussed whether they could move amendments to the Bill as a result of a comprehensive review of the POO as suggested by some of the deputations. Members may note that 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.

6. When considering the question of scope or subject matter of a bill, the President may take into account all relevant factors including the bill's long title, explanatory memorandum and the Legislative Council Brief (LegCo Brief). One of the approaches that has been adopted is to look at the long title of a bill together with the scope of relevant clauses in the bill. This approach has been adopted in cases where a long title of a bill is worded in general terms*. Members may note that paragraph 2(b) of the LegCo Brief states that the proposed amendments in Part 3 of the Bill seek to give effect to the CFA's judgment. Members may also note that paragraph 5 of the Explanatory Memorandum of the Bill states that Part 3 repeals the references to "(ordre public)" in the SO and the POO to sever "public order" in the law and order sense from "public order (ordre public)" which is interpreted in the same way as under the International Covenant on Civil and Political Rights as applied to Hong Kong. These would be relevant factors which the President would take into account when deciding the relevance of a proposed amendment.

7. Subject to the ruling of the President, it would appear that a proposed amendment to the Bill involving a substantive amendment of the POO as suggested by some of the deputations may not be relevant to the subject matter of the Bill as required under Rule 57(4)(a) of the Rules of Procedure.

Encl.

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* Please see paragraphs 6 to 12 of LC Paper No. LS71/06-07, which is attached at Appendix I.

Extract from LC Paper No. LS71/06-07

**Bills Committee on Rail Merger Bill
Application of Rule 57(4)(a) of the Rules of Procedure and
matters relating to the long title of the Rail Merger Bill**

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The requirement of relevance

6. The requirement of relevance for amendments to bills is laid down in Rule 57(4)(a) of RoP, which provides as follows-

“An amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates.”

7. Rule 57(4)(a) does not prevent an amendment by way of adding a new clause or clauses. This is made clear by Rule 56(2) which provides that a committee of the whole Council to which a bill is committed after a motion for the second reading of the bill has been agreed to shall have power to make such amendments as it shall think fit, provided that the amendments, including new clauses and new schedules, are relevant to the subject matter of the bill.

8. It can be seen from Rule 56(2) and Rule 57(4)(a) of RoP that the essential question for both proposed amendments to existing clauses and for new clauses to be added to the bill is whether the amendment is relevant to the subject matter of the bill.

Factors taken into consideration by the President in ruling on the question of the relevance of a proposed amendment

9. As a matter of established practice, the Administration is invited to express its comments on whether amendments proposed by Members meet the requirements of Rule 57(4)(a) of RoP. If the Administration is of the view that the proposed amendment does not meet those requirements, the Member will be asked to respond to that view. Counsel to the Legislature will then be asked to advise. A ruling will then be made by the President on the admissibility of the proposed amendment.

10. Based on the President's past rulings on the question of the relevance of a proposed amendment, it would appear that the President, in deciding this question, will form a view on the scope of the bill, against which she will consider whether the effect of the proposed amendment is within that scope, hence relevant to the subject matter of the bill.¹

11. When considering the question of scope or subject matter of a bill, the President may take into account all relevant factors including the bill's long title, explanatory memorandum and the Legislative Council Brief (LegCo Brief). One of the approaches that has been adopted is to look at the long title of a bill together with the scope of relevant clauses in the bill. This approach has been adopted in cases where a long title of a bill is worded in general terms.² There have been a few occasions where the President considered it necessary to ascertain the fundamental principles of a bill and considered whether the proposed amendment had the effect of altering these fundamental principles or merely amending its details. When determining what constitutes the fundamental principles of a bill, the President may take into account the long title of the bill and the legal effect of individual clauses in the bill.³ Under this approach, a proposed amendment is admissible if the President forms the view that the effect of a proposed amendment is not to remove the main legislative proposal of a bill and hence does not amount to altering the fundamental principles of the bill.

12. Other relevant factors that the President may take into account include the explanatory memorandum and LegCo Brief. However, these factors cannot be exhaustively listed as each case depends on its own facts. There have been cases where the President has looked at factors other than the long title and the explanatory memorandum of a bill.⁴ As for the LegCo Brief on a bill, the President will consider

¹ See President's ruling dated 31 July 2006 and 1 August 2006 on the Interception of Communications and Surveillance Bill as an example of the application of this approach.

² For example, regarding the Education (Amendment) Bill 1999, although the long title is worded generally as to amend the Education Ordinance, the President, in her ruling dated 10 March 2000 on the Bill, took into account the scope of the clauses proposed in the Bill in forming the opinion that the scope of the Bill was to amend the Education Ordinance (Cap. 279) so that the Government could enforce its policy on the retirement age of principals and teachers of aided schools only.

³ In the President's rulings on the Provision of Municipal Services (Reorganization) Bill dated 29 November 1999 and on the Immigration (Amendment) Bill 2000 dated 26 June 2001, the President took into account the long title of the Bill concerned and the legal effect of relevant clauses in the Bill to decide whether the proposed amendments go to the fundamental principles of the Bill rather than its details.

⁴ In the case of the Mass Transit Railway Bill (the MTR Bill), the President took into account the summary of the principal headings of the operating agreement between Government and the Mass Transit Railway Corporation which was annexed to the Legislative Council Brief on the MTR Bill. That summary was information available outside of the MTR Bill but was considered by the President to be relevant to her consideration of the scope or subject matter of the Bill.

the extent to which the information contained in a LegCo Brief is relevant or useful to her consideration based on the facts of individual cases.⁵ On the other hand, discussions on certain issues that take place in a Bills Committee or the time taken to discuss these issues cannot on their own be considered as relevant to the scope or subject matter of a bill. What may be considered relevant in discussions that take place at a Bills Committee meeting does not necessarily become relevant to the subject matter of the bill that the Bills Committee is considering.⁶

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⁵ Please refer to the President's ruling dated 10 July 2006 on the Betting Duty (Amendment) Bill 2006.

⁶ In the President's ruling dated 4 May 2006 on Dr Hon YEUNG Sum's proposed amendment to the Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Bill 2006 relating to the nomination arrangement in the event that there was only one Chief Executive candidate and nomination re-opened, the President ruled that the Member's proposed amendment was outside the scope of the Bill although the possibility of another round of nominations in the event of only one candidate validly nominated and the proposed consequential electoral arrangements had been discussed in the Bills Committee.