

立法會

Legislative Council

LC Paper No. LS9/09-10

Bills Committee on Public Officers Pay Adjustment Bill

Proposed amendment to lower the percentage of pay reduction

Background

At the meeting of the Bills Committee held on 27 October 2009, advice was sought on whether amendments might be made to the Public Officers Pay Adjustment Bill (the Bill) to lower the percentage of pay reduction as proposed in the Bill, and if so, which provisions of the Bill need to be amended. As requested by members, the advice given at the meeting is elaborated below for members' reference.

Requirement of relevance

2. Rule 57(4)(a) of the Rules of Procedure (RoP) provides 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.

3. Based on the past rulings of the former President, Mrs Rita FAN, 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 he will consider whether the effect of the proposed amendment is within the scope, hence, relevant to the subject matter of the bill¹. 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. However, there is no exhaustive list of the relevant factors, which must depend on the facts of each case.

4. According to the long title of the Bill, the purpose of the Bill is to adjust the pay, and the amount of certain allowances, payable to certain civil servants and officers of the Independent Commission Against Corruption (ICAC) and other public officers whose pay is determinable and adjustable in accordance with or by reference to a point in the civil service pay scale or on the ICAC Pay Scale. Given the purpose of the Bill and based on past President's rulings, a proposal to adjust the pay and the amounts of allowances payable to public officers by a percentage different from that proposed in the Bill should be within the scope of the Bill, and hence relevant to the subject matter of the Bill.

¹ See the ruling of the then President 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.

Whether the proposed amendment would have charging effect

5. Under Rule 57(6) of RoP, 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; (b) a designated public officer; or (c) a Member, if the Chief Executive consents in writing to the proposal. The restriction on Members' right to move amendments to bills provided in Rule 57(6) of RoP is often referred to as the charging effect restriction. It was adapted from the Standing Orders of the pre-1997 LegCo. The restriction was a procedural device provided to protect the Crown's financial initiative, reflecting the constitutional arrangement that it is the Government which demands and the legislature which provides. It has been held by the Court of First Instance in the case of *Leung Kwok-hung v President of the Legislative Council* [2007] 1 HKLRD 387 that Rule 57(6) is not inconsistent with the Basic Law.

6. In considering whether a proposed amendment to a bill has a charging effect for the purpose of Rule 57(6) of RoP, the former President, Mrs Rita FAN, has taken into account the following factors:

- (a) whether the proposed amendment would have the effect of reducing Government revenue - an amendment would have charging effect if revenue to be collected under the proposed amendment would be less than what is being collected under existing law which would be affected by the amendment²;
- (b) whether the proposed amendment would create a new function or power for, or to impose a new legal duty on, the Government and that the discharge of such function or duty, or the exercise of such power would incur public expenditure in respect of which no provision of public money has been made under existing law³; and
- (c) whether the proposed amendment would require additional Government expenditure and the amount involved is likely to be substantial⁴.

² In relation to taxation proposals, it was stated in previous President's rulings that the Government's proposal to increase its revenue from salaries tax cannot authorize it to collect the tax as proposed to be increased and that the increased money anticipated to be collected cannot be regarded as "the revenue of Hong Kong" until the proposals are approved. On this basis, the former President, Mrs Rita FAN, has ruled that a proposed amendment which seeks to retain the existing tax rates does not have charging effect as no reduction of Government revenue is involved. See the President's ruling dated 23 June 2003 on the Revenue (No. 2) Bill 2003 on the Committee Stage amendments proposed by Hon SIN Chung-kai.

³ Refer to paragraphs 10 and 13 of the President's ruling dated 31 July 2006 on the Interception of Communications and Surveillance Bill. Also see paragraphs 26 to 28 of the President's ruling dated 10 July 2008 on the Independent Police Complaints Council Bill.

⁴ Refer to paragraphs 37 to 41 of the President's ruling on the Independent Police Complaints Council Bill.

7. The pay of civil servants and public officers is part of Government expenditure for which appropriation would be made for each financial year by the Appropriation Ordinance. In the light of above principles established in previous President's rulings, to determine whether the proposed amendment to the Bill to lower the percentage of the proposed pay cut is admissible, it is likely that the President would consider whether the proposed amendment would require additional Government expenditure, i.e. whether the expenditure to be incurred by the Government on pay of civil servants and public officers would be more than what is being incurred under existing law. Since the pay reduction proposed by the Administration in the Bill is subject to approval by LegCo and will only have the force of law after the passage of the Bill, a proposed amendment to lower the percentage of reduction as proposed in the Bill should not have charging effect as no additional Government expenditure would be involved. For the same reason, a proposed amendment to retain the existing pay level of civil servants and public officers would not be caught by Rule 57(6) of RoP.

Amendments to provisions of the Bill

8. In the light of the above analysis, it is likely that an amendment to adjust the pay and the amount of allowances payable to public officers by a percentage lower than that proposed in the Bill would be ruled admissible. Such amendment may be made by replacing the references to "5.38%" in clauses 5(1) and (3), 6(1) and 7(1) of the Bill with the lower percentage of reduction to be proposed by members. Further, since the pay adjustment rules as proposed in clause 3 are based on a pay reduction of 5.38%, it may also be necessary to consider whether consequential amendments would need to be made to those rules if members wish to propose a different percentage of reduction.

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