

## **President's ruling on Committee stage amendments proposed by six Members to the Appropriation Bill 2013**

Hon Frederick FUNG, Hon Gary FAN, Hon WONG Yuk-man, Hon Albert CHAN, Hon CHAN Chi-chuen and Hon LEUNG Kwok-hung have respectively given notices to move a total of 762 Committee stage amendments (“CSAs”) to the Schedule to the Appropriation Bill 2013 (“the Bill”) at the Council meeting of 24 April 2013 as follows:

- (a) one CSA proposed by Hon Frederick FUNG to reduce the provision for one Head of Expenditure;
- (b) seven CSAs proposed by Hon Gary FAN to reduce the provisions for seven Heads of Expenditure;
- (c) 81 CSAs proposed by Hon WONG Yuk-man to reduce the provisions for 22 Heads of Expenditure;
- (d) 141 CSAs proposed by Hon Albert CHAN to reduce the provisions for 25 Heads of Expenditure;
- (e) 154 CSAs proposed by Hon CHAN Chi-chuen to reduce the provisions for 15 Heads of Expenditure; and
- (f) 378 CSAs proposed by Hon LEUNG Kwok-hung to reduce the provisions for 44 Heads of Expenditure.

2. In considering whether the CSAs proposed by the six Members are in order under the Rules of Procedure, I invited the Administration to comment on the CSAs and the Members to respond to the Administration's comments on their individual CSAs. The Administration's written views on the CSAs proposed to the Bill have been provided to the Members.

### **The Administration's comments**

3. The Administration's views on the CSAs proposed to the Bill are in the **Appendix**. In gist, the Administration raises two questions. First, when some Members' avowed intent for the introduction of numerous amendments is to filibuster the Bill, whether the admissibility of those proposed CSAs should be considered in the context of the President's

constitutional power and function to preside over meetings of the Legislative Council (“LegCo”) under Article 72(1) of the Basic Law (“BL 72(1)”). Second, whether the meaning of the term “an amendment” in Rule 57(4)(d) of the Rules of Procedure should include “a series of amendments”. The Administration submits that the answers to these two questions are in the affirmative.

4. The Administration also points out that:

- (a) at least 135 CSAs seeking to reduce by different permutations certain expenditure under a Head of Expenditure would produce mutually conflicting and unintelligible results;
- (b) at least 93 CSAs involving expenditure cuts would have the effect of rendering the relevant departments totally inoperable. These CSAs, if ruled in and endorsed by LegCo, would put public services into total disarray; and
- (c) 51 CSAs appear to refer to sums not included in the Bill or not included under the Heads/Subheads of Expenditure quoted.

5. The Administration invites me to rule out as frivolous or meaningless under Rule 57(4)(d) of the Rules of Procedure all those amendments or series of amendments proposed by Members with the avowed intent of delaying the legislative process. The Administration also contends that all those CSAs falling within the descriptions in paragraph 4 above should be ruled out, so as to ensure the proper exercise and discharge of the powers and functions of LegCo provided under BL 73.

6. The Administration does not have comments on the CSA proposed by Hon Frederick FUNG and those proposed by Hon Gary FAN.

### **Members’ response**

#### Hon Frederick FUNG’s response

7. Hon Frederick FUNG withdrew his notice for moving the CSA.

#### Hon WONG Yuk-man's response

8. Hon WONG Yuk-man withdrew his notice for moving the 20 CSAs falling within the description in paragraph 4(c) above. He has no comment on the Administration's views.

#### Hon Albert CHAN's response

9. Hon Albert CHAN has not responded to the Administration's views.

#### Hon CHAN Chi-chuen's response

10. Hon CHAN Chi-chuen withdrew his notice for moving one of his proposed CSAs falling within the description in paragraph 4(c) above. He has no comment on the Administration's views.

#### Hon LEUNG Kwok-hung's response

11. Thirty CSAs by Hon LEUNG Kwok-hung refer to sums not included in the Bill or the Heads/Subheads of Expenditure quoted. He has asked for my leave for him to revise 15 of his CSAs of this nature to rectify the inaccuracy. He has no comment on the Administration's views.

#### **My opinion**

12. Before forming my opinion on the admissibility of the CSAs, the number of which is unprecedented for an appropriation bill, I have revisited my powers and functions as President of LegCo conferred by the Basic Law and supplemented by the Rules of Procedure. Among other things, I have the constitutional powers and functions to preside over meetings under BL 72(1). It has all along been my understanding that such powers must include the power and function to exercise proper authority or control over meetings, including the orderly, fair and proper conduct of meetings. This understanding, on which I have acted, has been reaffirmed by the Court of Appeal in the case of *Leung Kwok Hung v the President of the Legislative Council of the Hong Kong Special Administrative Region* (CACV 123 of 2012).

13. One of my other powers and functions as prescribed in the Rules of Procedure is to rule on the admissibility of proposed amendments to a bill. In the exercise of this power, I fully respect the right of Members to participate in the legislative process. In the context of an appropriation bill,

the power of LegCo to examine and approve budgets introduced by the Government under BL 73(2) forms the basis for Members to debate the appropriation bill and the relevant estimates of expenditure which are subject to the Council's examination as part and parcel of the legislative process for enacting the appropriation bill, and to propose amendments to such a bill in accordance with the Rules of Procedure and the relevant practices.

14. Rule 69 of the Rules of Procedure governs amendments that may be proposed by Members to an appropriation bill. Counsel to the Legislature has pointed out to me that this rule does not explicitly limit the number of amendments that may be moved by each Member in respect of each head of expenditure included in an appropriation bill, and there is no past practice that limits the number of amendments moved by each Member in respect of each head of expenditure. Subject to good and cogent reasons to depart from such practice, it appears that a Member may propose multiple amendments to reduce the provision for a specific head to be appropriated in such a bill. Counsel has also advised me that Rule 57 of the Rules of Procedure should apply generally to amendments to bills including appropriation bills. Therefore, in deciding the admissibility of the 740 proposed amendments to the Bill (after Members have withdrawn notice for moving 22 out of the 762 CSAs), I need to form an opinion as to whether they comply with the requirements under both Rules 57 and 69.

15. A substantial number of amendments proposed by three Members fall into series in which each amendment seeks to reduce the appropriation to a particular Head of Expenditure by a sequentially varying amount. Rule 69 does not disallow such amendments. In determining whether amendments proposed in such a manner fall within the description of “frivolous” and “meaningless” under Rule 57(4)(d), I asked myself two questions. First, whether the passage of any one of such amendments in a series would serve any substantive purpose; and second, whether the passage of one such amendment vis-a-vis another in the same series would make any material difference. It appeared to me that the passage of any one of the amendments in question would achieve a substantive result, and that the passage of one such amendment would achieve an effect materially different from that of another in the same series. I therefore could not consider the amendments frivolous or meaningless, either taken individually or collectively.

16. While taking note of the concern expressed by the Administration about the avowed intent of some Members to filibuster by way of proposing numerous CSAs to the Bill, I must stress that the motive of Members proposing amendments has never been a relevant consideration in past

rulings. I must also point out that in my past rulings and those of my predecessors, the merits of the proposed CSAs, including their possible impact on the Government or Government operation, are not factors that have been taken into account.

17. In my view, unless the admission of certain proposed amendments would have the demonstrable effect of prolonging the legislative process to the extent of preventing LegCo from properly exercising and discharging its powers and functions under the Basic Law, I should not deprive Members' right to propose these amendments. At this stage, I am yet to be satisfied that the admission of the proposed CSAs to the Bill by the four Members will give rise to such a situation. Should such a possibility emerge in the course of the proceedings on the Bill, I will not hesitate to exercise my power to ensure the orderly, fair and proper conduct of meetings, including the taking of necessary steps to end the debates, and enabling the proposed CSAs to be voted upon by the Committee of the whole Council.

18. Thirty CSAs submitted by Hon LEUNG Kwok-hung refer to sums not included in the Bill or the Heads/Subheads of Expenditure quoted. As all CSAs to the Bill seek to reduce the provisions for specific Heads or Subheads, the accuracy of the Heads/Subheads quoted is fundamental to the integrity of the proposed CSAs. Hon LEUNG Kwok-hung has asked for my leave for him to revise 15 of his CSAs to rectify the inaccuracy. I do not consider it justified to grant leave as the notice requirement should not be dispensed with unless in very exceptional circumstances.

### **My ruling**

19. I rule that:

- (a) the 30 CSAs by Hon LEUNG Kwok-hung falling within the description in paragraph 4(c) above are inadmissible; and
- (b) the other 710 CSAs proposed by the five Members are admissible.



(Jasper TSANG Yok-sing)  
President  
Legislative Council

22 April 2013

財經事務及庫務局局長



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18 April 2013

Mr Kenneth Chen, SBS  
Secretary General  
Legislative Council  
Legislative Council Complex  
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Hong Kong

Dear Secretary General,

### **Appropriation Bill 2013**

Thank you for your letters dated 9, 11, 12, 15 and 16 April 2013, inviting the Administration's views in the context of Rules 57(4), 57(6) and 69 of the Legislative Council (LegCo)'s Rules of Procedure regarding the Committee Stage Amendments (CSAs) proposed to the 2013 Appropriation Bill.

I write to set out the Administration's views on the aggregate number of 762 CSAs proposed to the Bill, which collectively seek to reduce the provisions for 57 out of the total of 83 expenditure heads covered under the Bill.

### **The Power and Function of the President to Exercise Proper Authority or Control over the Legislative Process**

Without prejudice to the Administration's position on Article 74 of the Basic Law (BL 74), our views on the proposed CSAs to the Appropriation Bill are set out below.

The question of whether some LegCo Members, whose avowed intention for the introduction of the numerous amendments is to filibuster the Appropriation Bill, may be allowed to move those proposed CSAs, should be considered in the proper context of the President of LegCo's constitutional power and function to preside over meetings of the LegCo under BL 72(1). It has been widely reported in the press that hundreds of CSAs are proposed by certain Members with the sole intention of delaying the passage of the Appropriation Bill.

As decided by the Court of Appeal (CA) in *Leung Kwok Hung v The President of the Legislative Council of the Hong Kong Special Administrative Region*, CACV 123/2012, such power and function of the President of LegCo must, as a matter of interpretation or necessary implication, include the power and function to exercise proper authority or control over the legislative process. The orderly, fair and proper conduct of LegCo proceedings must be within the province of the President. Moreover, the CA also held that the power under BL 72(1) is supplemented by other powers and functions as prescribed in the Rules of Procedure ("RoP"). Whatever may be the effect of those rules interpreted on their own, they must be read subject to the constitutional power and function of the President under BL 72(1) to preside over meetings.

Under Rule 57(4)(d) of the RoP, an amendment which is frivolous or meaningless may not be moved. We note that the President has previously ruled that Rule 57(4)(d) applied only to individual amendments but did not apply to a series of amendments. In his ruling on the amendments proposed by Hon Albert Chan and Hon Wong Yuk-man to the proposed resolution under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) dated 18 June 2012, the President said the following in paragraph 9:

*"Regarding Mr CHAN's 59 amendments, each of which is seeking to change respectively the effective date of the proposed resolutions to the first day of the 59 months that follow July 2012, it is not the first time that he proposes amendments in such a manner. Mr CHAN explains that his amendments are to allow Members to choose the most appropriate date for the proposed resolution to take effect. My view is that even if each of these amendments taken individually may serve a particular purpose, it is obvious that when the 59 amendments are taken together, they can be regarded as frivolous and may have the effect of*

*prolonging Council proceedings more than is necessary for providing a fair choice for Members. I have serious reservation, as on a similar occasion recently, on whether such a series of amendments should be allowed to proceed without being subjected to any restrictions at all.* However, unless and until clear rules are provided in our Rules of Procedure to apply the restriction against a frivolous or meaningless amendment under Rule 57(4)(d) also to a series of amendments to motions, I have no option but to allow these 59 amendments to proceed in accordance with past rulings.” (emphasis added)

The above interpretation that Rule 57(4)(d) did not apply to “a series of amendments” was adopted by the President prior to the judgment of the CA in CACV 123/2012. It is submitted that in the light of the latest jurisprudence, there is scope to adopt a purposive interpretation of the term “an amendment” in Rule 57(4)(d) to include “a series of amendments” so that the President may rule out those amendments which, when taken together, can be regarded as frivolous or meaningless.

Further support to the above purposive interpretation of the term “an amendment” can be gained from the general rule of interpretation that “words and expressions in the singular include the plural and words and expressions in the plural include the singular.” (see for reference section 7(2) of the Interpretation and General Clauses Ordinance (Cap 1)).

The CA has held that the effect of an individual rule in the RoP, whatever that may be when interpreted on its own, must be read subject to the constitutional power and function of the President under BL 72(1) to preside over meetings. The Court of First Instance has also held in the same case of *Leung Kwok Hung v The President of the Legislative Council* [2012] 3 HKLRD 470 at 471 that on a purposive construction of BL 73(1) and 75(2), there is no constitutional right to filibuster. This is confirmed by the CA (at para 44) where the CA has further stated as follows:

“... Indeed there is much to be said for the view that the very continuance of a filibustering exercise would be *contrary to the proper exercise and discharge of the powers and functions of the Legislative Council* provided under article 73 of the Basic Law, and would constitute an infringement of other legislators' constitutional rights ... to participate in the legislative process in a meaningful manner.” (emphasis added)



Therefore, in order to ensure the proper exercise and discharge of the powers and functions of the LegCo provided under BL 73, in particular the orderly, fair and proper conduct of proceedings, it is considered that (in addition to the President's powers and functions under RoP 57(4)(d) as construed in the light of BL 72(1) above), it is within the constitutional power and function of the President (to preside over meetings) under BL 72(1) and his power under RoP 92 to rule out a CSA which, whether on its own or taken together with other CSAs, is in the opinion of the President (a) frivolous or meaningless or (b) intended or likely to unduly delay the legislative process (ie to filibuster).

The act of proposing amendments is very proximate to the meeting and forms part of the meeting. We are of the view that in making a ruling on a series of amendments which will have adverse effect on the conduct of a meeting, the President is exercising the power given by the Basic Law to preside over meetings. In light of the fact that certain Members have openly admitted that their CSAs are proposed for the purpose of filibustering, the proposed amendments should be scrutinised carefully under RoP 57(4)(d) as part of the proper exercise of the power and function of the President to preside over meeting.

It is submitted that whether an amendment is frivolous or meaningless should also be looked at from the point of its effect on the legislative process where the purpose of an amendment or a series of amendments is intended to delay the legislative process. Previous experience has shown that filibustering has adversely affected the effective and efficient operation of the Legislative Council.

In short, on the basis of (a) RoP 57(4)(d) as construed in the light of BL 72(1) above, and further or in the alternative, (b) the President's constitutional power and function (to preside over meetings) under BL 72(1) and his power under RoP 92, we would invite the President to rule out the amendments that are frivolous/meaningless and/or intended (or likely) to unduly delay the legislative process relating to the passage of the Appropriation Bill, having regard in particular to the avowed intent of some members to filibuster by way of such amendments. The Financial Secretary has already explained the importance of the early passage of the Bill in his letter of 18 April 2013.

### **Impact on public expenditure and operation of the Government**

Insofar as the proposed amendments seek to reduce the provisions included in the Appropriation Bill 2013 from the relevant Heads of Expenditure, they are similar to those which some LegCo Members proposed in relation to past Appropriation Bills. We maintain our views on BL 74 as set out in the Administration's letter dated 23 March 1999, commenting on similar amendments seeking to reduce provisions to be appropriated.

We would be most grateful if the LegCo President can take into account the views of the Administration when considering the CSAs Members proposed in relation to the Appropriation Bill.

We will revert under separate cover on the Administration's other observations on individual CSAs.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'K.C.Chan', with a long horizontal flourish extending to the right.

( Professor K C Chan )  
Secretary for Financial Services and the Treasury