

President's ruling on allocation of time for the remaining proceedings on the Appropriation Bill 2013

The meeting of the Legislative Council ("LegCo") of 8 May 2013 spanned over several days to 14 May 2013. On the morning of 13 May 2013, I ordered that a timeframe should be set for the remaining proceedings on the Appropriation Bill 2013 ("the Bill") so as to complete them before the meeting of 22 May 2013. I have undertaken to provide in writing the considerations for my decision.

The Bill

2. The Bill, which was presented to LegCo pursuant to Rule 52(2) of the Rules of Procedure and received its First Reading at the meeting of 27 February 2013, sought appropriation of \$356,140,198,000 for the services of the Government in the financial year ending on 31 March 2014. The Second Reading debate on the Bill was then adjourned and the Estimates were referred by me to the Finance Committee before examination by the committee of the whole Council pursuant to Rule 71(11) of the Rules of Procedure. The Council passed at the meeting of 20 March 2013 a Vote on Account ("VoA") resolution moved by the Administration under the Public Finance Ordinance (Cap. 2) allowing funding for the expenditure of a sum not exceeding \$75,545,010,000 on the services of the Government. According to the Administration, the provision would roughly be sufficient to meet about two months' Government recurrent expenditure.

3. Appropriation bills go through a scrutiny process unlike any other legislative proposal. Before the Bill was considered by committee of the whole Council, 20 sessions of special meetings of the Finance Committee lasting 31.5 hours altogether had been held, and a total of 5 471 initial written questions and 277 supplementary questions had been raised by Members seeking information on the details of public expenditure.

Debates on amendments at Committee stage

4. I ruled admissible 710 Committee stage amendments ("CSAs") to the Bill proposed by five Members. Seven of the CSAs were proposed by Hon Gary FAN while all the others were proposed by

Hon LEUNG Kwok-hung, Hon Albert CHAN, Hon WONG Yuk-man and Hon CHAN Chi-chuen (“the four Members”). In order to save time and avoid repetition of arguments, I directed under Rule 58(2) of the Rules of Procedure that interdependent CSAs to a particular Head of Expenditure (“Head”) should be grouped for joint debates. A total of 148 debates comprising 113 joint debates on interdependent CSAs and 35 debates on individual CSAs were arranged. The 710 CSAs would be put to vote one by one after all debates had been held. The CSAs were issued to Members on 22 April 2013. Members were notified in writing of the debate and voting arrangements on 23 April 2013, before the Council continued the Second Reading debate on the Bill at the meeting of 24 April 2013.

5. The Bill received its Second Reading after 19 hours’ debate during which all the 69 Members spoke. The Council proceeded to committee of the whole Council at 7:53 pm on 24 April 2013 to consider first the 26 Heads to which no amendments were proposed and then the 710 CSAs to the other 57 Heads. The general rule that a Member may not speak more than once on a question does not apply in committee of the whole Council, as stipulated in Rule 38(1)(a) of the Rules of Procedure. As at 1:00 pm on 10 May 2013 when the Council meeting of 8 May 2013 was suspended, the committee of the whole Council had spent 55 hours during which 17 debates on CSAs were completed. The debating time was mainly taken up by the four Members making one or more speeches at each debate: Hon LEUNG Kwok-hung spoke for 59 times, Hon Albert CHAN 39 times, Hon WONG Yuk-man 27 times and Hon CHAN Chi-chuen 42 times. In their speeches, these four Members stated unequivocally that their purpose of proposing a large number of CSAs was to filibuster the Bill and force the Administration to accede to their demands which included, among other things, the Government taking definite steps to introduce a universal retirement protection scheme and handing out \$10,000 to every local resident. On 99 occasions in their speeches I found them persisting in irrelevance or tedious repetition of their own or other Members’ arguments, and had to remind them of the need to comply with the Rules of Procedure. In addition to the four Members, 13 other Members spoke at the 17 debates.

6. On 10 May 2013, after the Council meeting of 8 May 2013 was suspended, the Financial Secretary held a meeting with Hon LEUNG Kwok-hung, Hon Albert CHAN and Hon CHAN Chi-chuen to discuss their demands. These Members proclaimed afterwards that because the Administration was not acceding to their demands, they were determined to continue with their filibuster.

7. When the Council meeting of 8 May 2013 resumed on 13 May 2013, I ordered that the debates on the CSAs would continue until 1:00 pm on 14 May 2013 and then the CSAs would be put to vote, so that all the proceedings on the Bill could be completed before the Council meeting of 22 May 2013.

My opinion

8. Under Article 73(2) of the Basic Law (“BL”), LegCo has the power and function to examine and approve budgets introduced by the government. Debate on an appropriation bill and the relevant estimates of expenditure which are subject to LegCo’s examination is part and parcel of the legislative process for enacting the bill. The funds authorized by LegCo in the VoA resolution represent about 20% of the total expenditure for the financial year 2013-2014, and are for the purpose of enabling the Government to carry on its services between the start of the financial year on 1 April 2013 and the enactment of the Bill. It is incumbent upon LegCo to complete examining and voting on the Bill within a reasonable time at the start of the financial year in order to discharge its power and function under BL 73(2).

9. As President of LegCo, I have the constitutional power and function to preside over meetings under BL 72(1). It has all along been my understanding that such power must include the power and function to exercise proper authority or control over meetings. This understanding 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). I note that in considering the nature and scope of the power provided under BL 72(1), the Court of Appeal held that:

- (a) so far as controlling meetings is concerned, the President’s right to preside over and to exercise proper authority or control over meetings is constitutionally stipulated, whereas the rules of procedure of LegCo are, by definition, subject to BL including BL 72(1)¹;
- (b) the powers given to the President in the Rules of Procedure are supplementary to his power given under BL 72(1) to preside over meetings, i.e. the Rules of

¹ See paragraph 59 of CACV 123/2012

Procedure are there to give the President additional powers, rather than to take away from him his power given under BL to preside over meetings²; and

- (c) Members' right to speak or participate in the legislative process must be read with, and subject to, the power of the President to preside over meetings under BL 72(1), which must include the power to end debates in appropriate circumstances and put matters to vote³.

10. The four Members proposed a total of over 700 CSAs with the express purpose to filibuster the Bill. As stated in my ruling⁴ on the admissibility of these CSAs, in deciding whether a CSA is in order, the motive of the Member proposing it should not be a relevant consideration. Nor should the merits of a proposed CSA and its possible impact if passed be taken into account. This notwithstanding, I have stated categorically that should a possibility emerge in the course of the proceedings on the Bill that the legislative process is prolonged to the extent of preventing LegCo from properly exercising and discharging its powers and functions under BL, I will not hesitate to exercise my power under BL 72(1) to ensure the orderly, fair and proper conduct of meetings, including the taking of necessary steps to end debates, and enabling the proposed CSAs to be voted upon by the committee of the whole Council.

11. I noted that the progress of debates on the CSAs to the Bill had been very slow. Also, there had been little interaction among Members at debates in Committee stage as very few Members other than the four Members would speak. As at 10 May 2013 at 1:00 pm, a total of 55 hours had been spent on the first 17 debates (including almost 17 hours used in quorum calls). At this rate, the Council would need another 390 hours to conclude the debates, before the 710 amendments were to be voted upon one by one. Assuming that Members would agree to shorten the duration of the division bell from five minutes to one minute, the voting would take another 21 hours. Then the Council would need several more hours to complete all remaining proceedings on the Bill. In all, probably over 30 meeting days running from 9:00 am to 10:00 pm each weekday would be needed. Based on the above, it would be well past the middle of June before all the proceedings on the Bill could be completed.

² See paragraph 53 of CACV 123/2012

³ See paragraphs 45 and 66 of CACV 123/2012

⁴ President's ruling on Committee stage amendments proposed by six Members to the Appropriation Bill 2013

12. However, the Financial Secretary's meeting with the filibustering Members had failed to give any productive result and the Members avowed to continue with the filibuster. My assessment was that in order to achieve the intended purpose of the filibuster, the Members would need to sustain it for an inestimable period of time. This would result not only in the undue delay of LegCo's decision on the Bill, but also serious obstruction to the Council from conducting other business.

13. I noted with grave concern the impact of the protracted debates on the Bill on the transaction of other Council business. Since the commencement of the Committee stage of the Bill on 24 April 2013, Members had been barred from raising oral questions at Council meetings, as well as from moving a motion to extend the scrutiny period of two pieces of subsidiary legislation. A Government motion scheduled to be moved at the Council meeting of 24 April 2013 had been held up. A total of 16 committee meetings had been cancelled or rescheduled. Furthermore, the Government had decided not to introduce subsidiary legislation unless strictly necessary before the completion of the proceedings on the Bill. The functioning of the Council had been seriously disrupted. In the circumstances, I consider it appropriate to exercise my power under BL 72(1) to ensure the orderly, fair and proper conduct of meetings so that LegCo would not be prevented from properly exercising and discharging its powers and functions under BL.

14. I am aware that any steps I should take to end a filibuster must be in accordance with BL and LegCo's Rules of Procedure. Counsel to the Legislature drew to my attention that according to the Court of Appeal judgment, Members' right to speak or participate in the legislative process must be read with, and subject to, the power of the President to preside over meetings under BL 72(1), and any constitutional right of Members to participate in the legislative process cannot possibly include the right to filibuster⁵. Counsel to the Legislature also advised me that based on the Court of Appeal judgment, I may invoke the powers under the Rules of Procedure to supplement my power to preside over meetings under BL 72(1). According to Rule 92, where there is no provision provided in the Rules of Procedure to deal with a certain situation in relation to the conduct of a meeting, I may decide the practice and procedure that should apply for dealing with that situation, and before making such decision, I may consider the practice and procedure of other legislatures for guidance.

⁵ See paragraphs 44 and 45 of CACV 123/2012

15. I note that measures such as closure motions to curtail debates and allocation of time orders are expressly provided for in the rules of procedure of some overseas legislatures. I understand that the Committee on Rules of Procedure is currently examining issues relating to the number of times Members may speak and curtailment of debates at Committee stage of a bill. Before relevant amendments are made to our Rules of Procedure, however, there is no rule to follow as regards the procedure of ending a debate which is subject to filibustering at the Committee stage of a bill. I therefore decided, in exercising my power under BL 72(1), to apply Rule 92 of the Rules of Procedure to set a timetable for the rest of the proceedings on the Bill to be completed.

16. In allocating the time for the remaining proceedings on the Bill, I had taken into account the time spent at Committee stage on appropriation bills in the past and had duly considered the need to allow sufficient time for the four Members as well as other Members to speak on the CSAs if they wished. I noted that the debating time at Committee stage of appropriation bills had never been over 20 hours in the past. In the case of the Bill, allowing the debate to continue until 1:00 pm on 14 May 2013 meant allocating approximately 14 additional hours for Members to speak on the CSAs on top of 55 hours already spent. In the end, I allowed all 24 Members who had indicated intention to speak to join the debate, which ended at 1:27 pm.

17. Members have asked me to take into account their views before I make any decision on procedural matters that are not expressly provided for in the Rules of Procedure. Besides taking procedural and legal advice from the Clerk and Counsel to the Legislature, I met Members twice in private on 3 and 13 May 2013 to hear their views.

18. I had considered a number of alternatives on how best to deal with the remaining proceedings on the Bill which included, among others:

- (a) There was a view that the debates on the CSAs should be allowed to carry on as the proceedings on the Bill could be expected to be completed by the middle or end of June 2013 the latest. I could not agree. As I have stated above, the filibuster had to be sustained for an inestimable period of time for it to work. But meanwhile, the normal transaction of LegCo business would be seriously obstructed. I could not allow the filibuster to continue indefinitely at the expense of the

smooth conduct of Council meetings and proper functioning of this law-making institution.

- (b) Another proposal was to allow committee meetings to convene in parallel with Council meetings to minimize the disruption. But this too could not resolve the matter as other business of the Council, such as the raising of oral questions, the resumption of Second Reading debate on other bills and the moving of Government motions and Members' motions, could not be transacted until after the proceedings on the Bill had been completed.
- (c) Some proposed to move a Member's motion to end the debates on the CSAs. In the absence of such a provision in the Rules of Procedure, I could not find this proposal to be in order.
- (d) There was also a suggestion of resolving the filibuster through a tripartite discussion among the four filibustering Members, the Administration and me. I considered it inappropriate for me as President of LegCo to step in what amounts to political bargaining between the Members and the Administration.

19. In my view, the only appropriate course of action in accordance with BL and the Rules of Procedure was to set a timetable for the rest of the proceedings on the Bill to be completed. In reaching this conclusion, I believe I have struck a balance among all relevant factors, including the right of Members to participate in the legislative process, the use of filibuster by Members as a tactic to bargain with the Administration, the smooth conduct of Council meetings and the proper functioning of this law-making institution.



(Jasper TSANG Yok-sing)
President
Legislative Council

16 May 2013