

President's ruling on allocation of time for the remaining proceedings on the Appropriation Bill 2014

At the start of the Council meeting of 21 May 2014, I ordered that a timeframe should be set for the remaining proceedings on the Appropriation Bill 2014 ("the Bill") so as to complete them on the first day of the meeting of 4 June 2014. I have undertaken to provide in writing the considerations for my decision.

The Bill

2. The Bill, which sought appropriation of \$335,848,320,000 for the services of the Government in the financial year ending on 31 March 2015, was presented to the Legislative Council ("LegCo") pursuant to Rule 52(2) of the Rules of Procedure and received its First Reading at the meeting of 26 February 2014. The Second Reading debate on the Bill was then adjourned and the Estimates were referred by me to the Finance Committee for examination before consideration of the Bill in committee of the whole Council pursuant to Rule 71(11) of the Rules of Procedure. The Council passed at the meeting of 19 March 2014 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 of not exceeding \$78,677,470,000 on the services of the Government. According to the Administration, the provision would be sufficient to enable the Government to meet its recurrent obligations and discharge its public functions until the end of May 2014.

3. Before the Bill was considered in committee of the whole Council, 20 sessions of special meetings of the Finance Committee lasting 31 hours in total had been held, and a total of 6 660 initial written questions and 232 supplementary questions had been raised by Members seeking information on the details of public expenditure.

Debates on amendments at Committee stage

4. The Bill received its Second Reading after 17 hours of debate at the Council meeting on 9 and 10 April 2014. The Committee stage of the Bill was originally scheduled to commence at the Council meeting of 16 April but I rescheduled it to the Council meeting of 30 April to allow time for me to consider the 1 917 Committee stage amendments ("CSAs")

proposed by 14 Members. I ruled admissible 1 192 CSAs to 69 Heads of Expenditure (“Heads”) of which 1 163 CSAs were proposed by four Members, namely Hon Albert CHAN, Hon LEUNG Kwok-hung, Hon CHAN Chi-chuen and Hon WONG Yuk-man. In accordance with the grouping on policy areas proposed by the Administration for the debate on the Motion of Thanks on the Policy Address 2014, I allow five joint debates for the consideration of the CSAs.

5. On 30 April, the Bill stood committed to the committee of the whole Council, which first considered the 14 Heads to which there were no amendments. 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. The debate on the Heads without CSAs lasted almost seven hours. The first joint debate on CSAs commenced at 2:06 pm on 7 May, and I noted after some 25 hours of the debate that Hon Albert CHAN, Hon LEUNG Kwok-hung and Hon CHAN Chi-chuen (“the three Members”) still indicated intention to speak. I met in private Members of different political groupings and affiliation separately on 14 and 15 May to hear their views on the estimated debate time on CSAs they would need. I sought in particular the views of the four Members who proposed a total of 1 163 CSAs. Other than Hon LEUNG Kwok-hung who could not tell how much more time he would need to speak further as it was his avowed intention to filibuster the Bill, other Members had led me to believe that all the proceedings on the Bill could be completed by the end of May 2014.

6. As it transpired, the first joint debate on CSAs did not end until 7:22 pm on 15 May bringing its total debate time to 45 hours. During the debate, the three Members successively requested to speak and repeatedly asked for quorum calls. When the Council was adjourned on 16 May 2014, the second joint debate on CSAs which had continued for 11 hours had not finished. As in the first joint debate on CSAs, the three Members again successively requested to speak and repeatedly asked for quorum calls in the second joint debate on CSAs. As at 16 May, in the 63 hours of debate in Committee stage of the Bill, the three Members had spoken 161 times in total, and on at least 47 occasions I reminded them of the need to comply with the Rules of Procedure and not to persist in irrelevance or tedious repetition of their own or other Members’ arguments. Furthermore, about 25% of the time in Committee stage was spent on quorum calls requested mostly by them.

7. I sought Members' view on increasing the meeting hours of the Council to deal with the Bill. However, most Members objected to any increase in meeting hours for various reasons. Having regard to the progress of the debates, I considered it highly unlikely that all the proceedings on the Bill could be completed by the end of May 2014.

8. At the start of the Council meeting of 21 May 2014, I ordered that the second joint debate on CSAs would continue for no more than two hours, the remaining three joint debates on CSA would last no more than 24 hours with roughly eight hours for each debate, and then the CSAs would be put to vote, so that all the proceedings on the Bill could be completed on the first day of the Council meeting of 4 June 2014.

My opinion

9. 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. I fully respect the right of Members to participate in the legislative process by proposing amendments to the Bill and debating amendments in accordance with the Rules of Procedure.

10. The first joint debate on CSAs went on for 25 hours before I met in private Members of different political groupings and affiliation separately to gauge the time they would need in debating the CSAs. Based on the estimated time required for debate on CSAs as indicated by Members, I assessed that all the proceedings on the Bill could be completed by the end of May 2014. Therefore, I stated in public my intention to allow the debates to run their natural course as far as possible, provided that there was adequate meeting time, and that no Member would seek to prolong the debates interminably.

11. I allowed the first joint debate to continue for 45 hours until no Member requested to speak. I noted, however, that the meeting time was not fully and effectively utilized for the purpose. Frequent requests were made by the three Members for quorum calls under Rule 17(3) of the Rules of Procedure, and such requests became more frequent over time. At the same time, Hon LEUNG Kwok-hung proclaimed in public his intention to filibuster the Bill in an attempt to force the Administration to accede to his demand for implementing universal retirement protection.

The same tactic was used by him on the Appropriation Bill 2013 last year without achieving the intended result. The Member repeatedly said during the first two joint debates on CSAs to the Bill that the Financial Secretary did not even bother to contact him to discuss his demand. The use of filibuster by the Member as a means to bargain with the Administration could apparently lead to no consequences other than prolonging Council proceedings.

12. I note from the Court of Appeal judgment 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) that 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 filibuster¹.

13. As President, it is incumbent upon me to protect LegCo as a law-making institution. The serious disruption of other Council business arising from the protracted debate on the Bill had caused me grave concern. Since the commencement of the Committee stage of the Bill on 30 April, Members had not been able to raise oral questions on the work of the Government at Council meetings. Two motions to respectively extend the scrutiny period of a piece of subsidiary legislation and amend another could not be dealt with before the expiry of the statutory deadlines. A total of 11 Members' motions and the resumption of Second Reading on a bill to give effect to a proposal in the Budget were held up. The consideration by the Finance Committee of three financial proposals related to the Budget was deferred pending the passage of the Bill. A number of committee meetings had to be rescheduled because of the continuation of the Council meetings held weekly from Wednesday to Friday to deal with the Bill. I could understand Members' reasons for not agreeing to increase the meeting hours of the Council so as not to affect the work of committees further.

14. Against the above background and given the progress of the debates on CSAs, it became apparent not only that the proceedings of the Bill could not be completed by the end of May 2014 as assessed earlier by Members, but such completion date had become inestimable. As such, I became increasingly concerned that the Council may not even complete all its outstanding business at the last meeting of 9 July 2014 scheduled for this legislative session. As President, I could not allow the protracted

¹ See paragraphs 44 and 45 of CACV 123/2012

debates on the Bill to sustain to the extent of preventing LegCo from properly exercising and discharging its powers and functions under the Basic Law. I therefore consider it appropriate to exercise my power under BL 72(1) to ensure the orderly, fair and proper conduct of meetings, which includes the power to end debates in appropriate circumstances and put matters to vote².

15. I have repeatedly stressed the need for express provisions in the Rules of Procedure to deal with filibusters. I have exchanged views with Members of the Committee on Rules of Procedure (“CRoP”) on different options to deal with filibusters including allocating time to debates at Committee stage of bills and moving closure motions to curtail debates. I note that CRoP has decided to consult Members on these and other proposed procedures to deal with filibusters and voluminous amendments to bills and motions, and I look forward to the formulation of a mechanism agreeable to Members. However, consensus is unlikely to be reached by Members in the immediate future, and in the absence of procedure to deal with filibusters in the Rules of Procedure, I was left with no alternative but to invoke the power under Rule 92 of the Rules of Procedure to decide on the practice and procedure that should apply in dealing with the present situation. Pursuant to Rule 92, I decided 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 need for the Council to resume the transaction of other Council business in early June 2014 in order that all the outstanding business could be dealt with in the current legislative session. The scrutiny process of the Bill had lasted almost three months since its presentation to the Council in late February 2014. Members had opportunities to seek information on the details of public expenditure at the special meetings of the Finance Committee. Given the additional 26 hours for the remaining joint debates on CSAs to the Bill allowed by me, a total of 83 hours would be made available for debate solely on CSAs. In my view, Members should be able to articulate their views within a specified time limit unless they intend to prolong the proceedings. The setting of a time limit for debates does not deprive Members of the right to monitor the work of the Government. On the other hand, allowing the debates on the Bill to be protracted without any time limit would definitely deprive Members of opportunities to monitor the Government by various effective means in the Council.

² See paragraphs 52 and 66 of CACV 123/2012

17. In making my decision to set a timeframe for the rest of the proceedings on the Bill, 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.

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

(Jasper TSANG Yok-sing)
President
Legislative Council

23 May 2014