



LegCo President's Decisions on Members' Bills

Since the last issue (November 2008), the LegCo President has made two decisions on members' bills under Rule 51(3) and (4) of the Rules of Procedure of the LegCo.¹ In brief, in both of these two decisions, the LegCo President ruled that the Bill concerned related to Government policies for the purpose of Rule 51(4) of the Rules of the Procedure, and required the written consent of the CE for its introduction into the LegCo.

Mandatory Provident Fund Schemes (Amendment) Bill 2009

The first decision was made on 5 February 2009 in respect of the Mandatory Provident Fund Schemes (Amendment) Bill 2009 proposed by Hon Lee Cheuk-yan. The Bill aims to provide a legal framework whereby any special contribution

that may be made by the Mandatory Provident Fund Schemes Authority (the Authority) could be paid into a specified sub-account of a Mandatory Provident Fund (MPF) account holding the voluntary contributions of a member of a registered

scheme. The Bill would provide an alternative way of dealing with special contributions by the Authority.

Under the Mandatory Provident Fund Schemes Ordinance (Cap.485) (MPFSO), accrued benefits derived from voluntary contributions are subject to different legislative provisions with the result that they may at the request of a scheme member be paid out in accordance with the governing rules of the registered scheme. Amendments proposed in the Bill would permit special contributions by the Authority to be paid out to scheme members before the retirement age of 65 years.



The LegCo President ruled that the Bill related to Government policies for the purpose of Rule 51(4) of the Rules of Procedure and required the written consent of the CE for its introduction.

The LegCo President was of the view that the current Government policy relating to special contributions to MPF accounts, i.e. contributions other than made by scheme members and their employers, was clearly reflected in the MPFSO and the Mandatory

¹ For further discussion on the operation of Rule 51 of Procedure of the LegCo, please refer to *The Focus* at p 15 of Issue No 1 of the Bulletin.



Provident Fund Schemes (General) Regulation (Cap 485A). The policy was:

- (a) special contributions might only be paid into specified sub-accounts of MPF accounts for holding mandatory contributions; and
- (b) special contributions were to be dealt with as mandatory contributions so that they might only be withdrawn by scheme members concerned upon reaching their retirement age of 65, or under specified circumstances.

The amendments to be effected by the Bill would permit special contributions to be paid into specified sub-accounts other than those holding mandatory contributions, and to be regarded not as mandatory contributions but as voluntary contributions instead. That would enable the scheme members concerned to withdraw the special contributions before the retirement age. As such, the Bill clearly impacted upon the

current Government policy, and the effect could not be said to be negligible or minimal.

The LegCo President was of the view that the Bill, if enacted, would have substantive effect on the Government policy reflected in the MPFSO and MPFS (General) Regulation.

Smoking (Public Health) (Amendment) Bill 2009

The second decision was made on 11 May 2009 in respect of the Smoking (Public Health) (Amendment) Bill 2009 proposed by Hon Albert Chan Wai-yip. The purpose of the Bill was to defer the implementation date of the smoking ban in the listed establishments referred to in Part 2 of Schedule 6 to the Smoking (Public Health) Ordinance (Cap.371) (SPHO) by two years, i.e. from 1 July 2009 to 1 July 2011.²

The LegCo President ruled that while the Bill did not relate to the operation of the Government for the purpose of Rule 51(3) of the Rules of the



² These "listed establishments" include a designated mahjong room in a qualified club or any other listed establishment, a qualified bar, a qualified club, a qualified nightclub, a bathhouse, a massage establishment, and mahjong-tin kau premises.



Procedure, it related to Government policies for the purpose of Rule 51(4) of the above Rules.

On the operation of the Government issue, it was the Administration's submission that the Bill, if enacted, would substantially extend the said implementation date, albeit the extension was for a fixed period. It would have an obvious or substantive impact on the procedure of the Government in that during the whole period of the extension proposed by the Bill, it could not enforce the smoking ban in the listed establishments as provided in SPHO, which was an important part of the Government's current tobacco control policy. The LegCo President ruled that the above submission by the Administration was not substantiated by any information on what procedure of the Government, and exactly, how that procedure would be affected by the extension

of the said implementation date. In the absence of such information, he was not satisfied that the Bill related to the operation of the Government for the purpose of Rule 51(3).

On the Government policies issue, the LegCo President was of the opinion that the current Government policy on implementing the smoking ban in the listed establishments with effect from 1 July 2009 was clearly reflected in the relevant statutory provisions, i.e. sections 2, 8(2)(c)(i), 8(2)(c)(ii) and 16 of Part 2 of Schedule 6 to SHPO. The amendments to be effected by the Bill would defer the implementation of the smoking ban in such establishments by a period of two years. As such, the Bill clearly impacted upon Government policy and the effect could not be said to be negligible or minimal.

