



## LegCo President's Decision on Member's Bill

### Rule 51(3) and (4) of the Rules of Procedure

Since September 2012, the President of the LegCo ("President") has on two occasions considered whether a Member's Bill was caught by Rule 51(3) and (4) of the LegCo Rules of Procedure ("RoP"). On these occasions, the President ruled that the Bills concerned related to Government policies and hence may not be introduced without the written consent of the CE. A summary of the ruling of the President on two of the Member's Bills is provided below.

Rule 51(3) of the RoP provides that Members may not individually or jointly introduce a bill which, in the opinion of the President, relates to: (i) public expenditure; (ii) political structure; or (iii) operation of the Government. Rule 51(4) further provides that in the case of a bill which, in the opinion of the President, relates to Government policies, the written consent of the CE is required for its introduction.

### The Professional Accountants (Amendment) Bill 2013

This decision was made on 22 February 2013 in respect of the Professional Accountants (Amendment) Bill 2013 ("2013 Bill") proposed by Hon Kenneth LEUNG. The Bill proposed amendments to the Professional Accountants



Ordinance (Cap. 50) ("PAO") to implement the following proposals approved by the Council of the Institute:

- (i) to enable a certified public accountant (practising<sup>1</sup>) to incorporate a company with only one director and shareholder and to register the company as a corporate practice, which is qualified to perform audits; and
- (ii) to prohibit any company, not being a corporate practice registered with the Institute, to use the description "certified public accountant", the initials "CPA" or the characters "會計師" in its name intended to cause, or which may reasonably cause, any person to believe that it is a practice unit registered under the PAO.

On 2 November 2011, the President ruled that the Professional Accountants (Amendment) Bill 2011 ("2011 Bill") submitted by Hon Paul CHAN, a former

<sup>1</sup> A certified public accountant is a person registered by the Institute as a certified public accountant by virtue of section 22 of the PAO. A certified public accountant (practising) means a certified public accountant holding a practising certificate issued by the Institute under section 30 of the PAO. Only a certified public accountant (practising) is eligible to perform audits.

Member of LegCo, related to Government policies within the meaning of Rule 51(4) of the RoP, and the written consent of the CE was required for its introduction. The 2013 Bill contained the same proposals and aimed to achieve the same effects as those of the 2011 Bill.

Clause 3 of the 2011 Bill, which was essentially the same as clause 3 of the 2013 Bill, proposed to amend the PAO to provide that a sole certified public accountant (practising) may incorporate a company with only one shareholder and to register the company as a corporate practice. The President stated in his ruling on the 2011 Bill that the proposed amendment not only related to the Government's policies on the regulation of the accountancy profession as reflected in the PAO, but also clearly affected a significant aspect of the requirements for registration of an accounting practice as a corporate practice set out in its section 28D(2)(c) by altering the number of shareholders required for registration as a corporate practice.

Clause 4 of the 2011 Bill, which was again the same in essence as clause 4 of the 2013 Bill, sought to amend section 42(1)(ha) of the PAO to prohibit a body corporate which is not a corporate practice from using the description "certified public accountant", the initials "CPA" or the characters "會計師" in its name with the intention of causing, or which may reasonably cause, any person to believe that it is a practice unit registered under PAO, with the effect of making any contravention punishable with the same penalty as with contravention of the existing prohibitions against such descriptions as "certified public accountant (practising)", "public accountant" and "CPA (practising)". These additional prohibitions



related to what the Administration submitted as "Government's policy to support the regulation of unqualified service-providers who present themselves as qualified corporate practice", and the policy is reflected in the offence and penalty provisions in the PAO. The prohibitions clearly have a substantive effect on the policy on the regulation of unqualified service-providers in that clause 4 has the effect of enhancing that policy in a material aspect by increasing the prohibitions against misleading descriptions.

The President ruled that the 2013 Bill intended to be introduced by the Hon Kenneth LEUNG related to Government policies within the meaning of Rule 51(4) of the RoP, and the written consent of the CE was required for its introduction.



### Import and Export (Import and Export (General) Regulations) (Amendment) Bill 2013

The second decision was made on 5 July 2013 in respect of the Import and Export (Import and Export (General) Regulations) (Amendment) Bill 2013 ("the Bill") proposed by Hon Paul TSE. The purpose of the Bill was to amend the definition of "powdered formula" in the Import and Export (General) Regulations (Cap. 60 sub. leg. A) ("IE Regulations") to provide a more precise and practicable definition.



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On 22 February 2013, the Import and Export (General) (Amendment) Regulation 2013 (“the Amendment Regulation”) made by the CE in Council was published in the Gazette. The Amendment Regulation amends the IE Regulations to prohibit the export of powdered formula to all places outside Hong Kong, except with an export licence or under an exemption, for the purpose of ensuring a sufficient and stable supply of powdered formula for infants and children aged under 36 months in Hong Kong. In the light of the views of the Subcommittee scrutinising the Amendment Regulation, the Administration gave notice to move a motion at the Council meeting of 17 April 2013 to amend the definition of “powdered formula” to improve its clarity. The motion was not moved as the Council meeting was adjourned due to the lack of a quorum before the motion on the Agenda was reached.

The Administration submitted that the Government’s policy was not to introduce further amendments to the definition of “powdered formula”. It considered that the existing definition had fully and effectively reflected the policy intent and the scope of regulation of powdered formula. Instead of proposing further amendments to clarify the definition, the Administration had issued a further set of enforcement guidelines to frontline officers to ensure that the enforcement work would continue to be carried out smoothly on a standardized basis. Publicity efforts had also been enhanced to ensure a better understanding of the policy intent and scope of the Amendment Regulation by the public.

The Administration also submitted that the Government’s policy was to focus on improving the supply chain management of powdered formula suppliers through various improvement

measures, so as to ensure a sufficient and stable supply of powdered formula for infants and young children in Hong Kong. The Administration had pledged to conduct a review in October 2013 to examine the effectiveness of the supply chain improvement measures. If such measures were proven to be effective and sustainable, the Administration would consider repealing the provisions introduced by the Amendment Regulation.

The President noted that, in order for a bill not to be caught by Rule 51(4) of the RoP, the implementation of the Bill must not have a substantive effect on Government policies.

The Bill sought to amend the definition of “powdered formula” in the IE Regulations to provide a more precise and practicable definition. The President, taking into account the advice of Counsel to the Legislature, ruled that the differences between the proposed new definition and the existing definition of “powdered formula” would no doubt have a substantive effect on the definition of “powdered formula”. The President accepted that as the definition was an integral part of the Government’s policy to regulate the export of powdered formula, the Bill, if enacted, would certainly have a substantive effect on that policy.

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

