LegCo President's Decision on Member's Bill

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

Since September 2015, the President of the LegCo ("President") has on one occasion considered whether a Member's Bill was caught by Rule 51(3) and (4) of the LegCo Rules of Procedure ("RoP"). On this occasion, the President ruled that the Bill 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 the Member's Bill 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 Bank of Communications (Hong Kong) Limited (Merger) Bill 2015

This decision was made on 16 November 2015 in respect of the Bank of Communications (Hong Kong) Limited (Merger) Bill 2015 ("the Bill") proposed by Hon NG Leung-sing. The Bill provides for the vesting in Bank of Communications (Hong Kong) Limited ("Bank of Communications (Hong Kong)") of the undertakings of the Hong Kong branch of Bank of Communications Co., Ltd ("Bank of Communications, Hong Kong Branch") on a day to be appointed by the directors of Bank of Communications (Hong Kong) ("the appointed day"). Its main purpose was to transfer the undertakings of Bank of Communications, Hong Kong Branch, which constitute the retail banking business and private banking business of Bank of Communications, Hong Kong Branch (except for certain excluded property and liabilities), to Bank of Communications (Hong Kong).

The Administration submitted that although the Bill did not relate to public expenditure, political structure or the operation of the Government, it related to Government policies in respect of bank merger, taxation and control of tenancies.

The Administration also submitted that Clause 8 of the Bill effectively allowed any profits and losses of Bank of Communications, Hong Kong Branch with regard to such businesses to be treated as the profits and losses of Bank of Communications (Hong Kong) under the Inland Revenue Ordinance (Cap. 112) ("IRO") for the year of assessment in which the appointed day occurs. Clause 15(1)(a) and (b) of the Bill sought to amend the application of section 53(4)(a) and (7)(a) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) ("LTO") regarding an acquisition, disposal, assignment, transfer or parting with possession of an interest in land; and section 6(1)(b) of the LTO regarding an assignment or underlease of, or an agreement to assign or underlet an interest in land. The Administration considered that the aforesaid provisions of the Bill, if enacted, would have the effect of amending the application of those sections of LTO referred to therein, hence related to Government policies concerning the control of tenancies under LTO.

The President, taking into account the advice of Counsel to the Legislature in light of the views of the Administration, and having regard to Hon NG's response that he had no comment on the Administration's views, ruled that the Bill, if passed by the Council, would have substantive effect on Government policies on bank merger, taxation and control of tenancies, including those Government policies as reflected in the Banking Ordinance (Cap. 155), IRO and LTO. The President decided that the Bill 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.