



LEGCO PRESIDENT'S DECISIONS ON MEMBERS' BILLS

CITIC Ka Wah Bank Limited (Merger) Bill

Since the last issue (April 2002), the LegCo President has made one decision under Rule 51 (3) and (4) of the Rules of Procedure of the LegCo¹ on 24 April 2002 in respect of the CITIC Ka Wah Bank Limited (Merger) Bill. The Bill was proposed by Dr Hon David Li Kwok Po. The Bill sought to transfer certain undertakings of CITIC Ka Wah Bank Limited to The Hong Kong Chinese Bank Limited, thereby effecting a merger between the two banks in so far as undertakings were concerned. The Hong Kong Chinese Bank Limited would become the merged entity and should be changed to "CITIC Ka Wah Bank Limited". On a day to be appointed by the Hong Kong Monetary Authority, the original banking licence of CITIC Ka Wah Bank Limited would be revoked and the bank would be changed to "CITIC International Financial Holdings Limited".

Having considered the advice of Counsel to the Legislature in the light of the views of the Secretary for Financial Services ("SFS") on the Bill, and having regard to Mr Li's advice that he had no objection to SFS's views, the LegCo President was satisfied that the Bill related to Government policies on the regulation of banks, the set-off of losses against profits of corporations, and the control of tenancies, as reflected in the relevant legislation. The LegCo President decided that the Bill related to Government policy within the meaning of Rule 51(4) and required the written consent of the CE for its introduction.

Written consent for the introduction of the Bill was given by the CE and it was enacted by the LegCo as the CITIC Ka Wah Bank Limited (Merger) Ordinance (Ord No 30 of 2002) and gazetted on 19 July 2002. **BLB**

sidelights



Major Rulings on Human Rights since 1 July 1997

Right to a fair hearing
(BoR Art 10 / ICCPR Art 14(1))

Ruling

The right to a fair hearing under BoR Art 10 required that a determination of rights and obligations made by the executive be subject to subsequent control by a judicial body that had full jurisdiction on both law and fact. However, where an administrative determination had a high policy content or was made on the grounds of expedience, the absence of appeal to a judicial body with full jurisdiction was still consistent with BoR Art 10 as the final decision on the merits should rest with the executive rather than a court.

In such case, it was sufficient if the decision was subject only to judicial review on legality.

Ma Wan Farming Ltd v CE in Council & Another
[1998] 1 HKLRD 514
(CA, 26 March 1998)

Retrospective legislation
(BoR Art 12 / ICCPR Art 15)

Ruling

In the context of the Hong Kong legal system, the prohibition against persons being held guilty of retrospective criminal offences in BoR Art 12(1) struck at the retrospective provision itself and not merely at prohibiting prosecution and conviction of persons for criminal offences. It rendered s 1(2) of the Immigration (Amendment) (No 3) Ordinance 1997 (No 124 of 1997) which involved persons retrospectively in the commission of criminal offences of landing or remaining in Hong Kong without permission contrary to s 38 of that Ordinance unconstitutional.

Ng Ka Ling & Others v Director of Immigration
[1999] 1 HKLRD 315
(CFA, 29 January 1999)

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