



## President's Decision on Member's Bill

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

Since September 2011, the 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 CE is required for its introduction.

### The Professional Accountants (Amendment) Bill 2011

This decision was made on 2 November 2011 in respect of the Professional Accountants (Amendment) Bill 2011 proposed by Hon

Paul CHAN. The Bill proposed to amend the Professional Accountants Ordinance (Cap. 50) ("PAO") to implement the following proposals approved by the Council of the Institute:

- (a) 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
- (b) 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 PAO.

In the opinion of the President, clause 3 of the Bill proposed to amend 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. This proposed amendment not only related to the Government policies on the regulation of the accountancy profession as reflected in PAO but also clearly affected a significant aspect of the requirements for registration of an accounting practice as a

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



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Region of the People's Republic of China ("Basic Law") in accordance with the Interpretation by the Standing Committee of the National People's Congress of Articles 22(4) and 24(2)(3) of the Basic Law".

The Bill proposed to repeal the existing paragraph 2(a) of Schedule 1 to the Immigration Ordinance ("IO"), which specifies that "A Chinese citizen born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region" is a permanent resident of the HKSAR, and replaced it with a new paragraph 2(a) which reads "A Chinese citizen born in Hong Kong - (i) before 1 July 1987; or (ii) on or after 1 July 1987 if his or her father or mother was settled, or had the right of abode, in Hong Kong at the time of his or her birth or at any later time".

The President was of the opinion that in order for a bill not to be caught by Rule 51(4) of the RoP, the bill must not have substantive effect on Government policies which include policies reflected in legislation. The President accepted the Administration's submission that Hon LAM's Bill, if passed by the Council, will in effect restore paragraph 2(a) of Schedule 1 to IO to the position prior to the CFA judgment in *Director of Immigration v Chong Fung Yuen* [2001] 2 HKLRD 533, which is in conflict with the prevailing government policy as reflected in the current version of paragraph 2(a) of Schedule 1 to IO. The President was of the opinion that Hon LAM's Bill would have substantive effect on the Government policy in relation to the right of abode in Hong Kong and ruled that the written consent of CE was required for its introduction.

corporate practice set out in its s. 28D(2)(c) by altering the number of shareholders required for registration as a corporate practice.

Clause 4 of the Bill, which sought to achieve the proposal stated above, not only related to Government policy as reflected in the offences and penalties provisions in PAO but also clearly had a substantive effect on what the Administration had described in its submission as "Government's policy to support the regulation of unqualified service-providers who present themselves as qualified corporate practice" in that clause 4 had the effect of enhancing that policy in a material aspect by increasing the prohibitions against misleading descriptions. The President ruled that the Bill related to Government policies.

### The Immigration (Amendment) (No. 2) Bill 2012

This decision was made on 12 July 2012 in respect of the Immigration (Amendment) (No. 2) Bill 2012 intended to be introduced by Hon Jeffrey LAM.

According to its Explanatory Memorandum, the Bill sought "to amend the Immigration Ordinance (Cap. 115) to reinstate and implement the true legislative intent of Article 24(2)(1) of the Basic Law of the Hong Kong Special Administrative