

**Extract of minutes of meeting on Constitutional Affairs Panel
held on 19 December 1999**

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V. Articles 50 and 51 of the Basic Law

(LC Paper Nos. CB(2) 2558/98-99(03) and 623/99-00(03))

20. Deputy Secretary for Treasury (DST) explained that the Administration's interpretation of the term "budget" referred to in Articles 50 and 51 of the Basic Law had taken three main factors into consideration, namely, the context in which the term was used, the purpose of the provisions concerned and the established practice in seeking LegCo approval of expenditure and revenue proposals. The Administration maintained the view that the term "budget" in the context of Articles 50 and 51 referred to the expenditure side of the budget, i.e. the Appropriation Bill, but the term as appearing in other sections of the Basic Law might carry an ordinary and wider meaning of both revenue and expenditure.

21. DST assured members that there was no question of the Administration adopting an interpretation of the term "budget" with a view to limiting LegCo's power in monitoring Government's revenue proposal as suggested by some members. As she had explained at the last meeting, the established practice in seeking LegCo approval of expenditure and revenue proposals was different. Expenditure was voted on annually through the passage of the Appropriation Bill, and the non-passage of it warranted some transitional arrangements to enable the government service to continue to operate. However, similar transitional or contingency requirements were not required for the revenue aspect of the budget. Regardless of the outcome of the revenue bill(s), Government continued to have the legal power to tax or charge based on previously enacted legislation and this existing revenue base would normally account for the bulk of Government's income in the year.

22. DST further said that the Administration had taken a purposive approach to the interpretation of the Basic Law. In this regard, it was noted that the constitutional purpose of Article 50 was to protect the Legislature from arbitrary dissolution. Under Article 50, dissolution of LegCo could not be achieved except in very limited circumstance, i.e. LegCo twice passing a bill which the Chief Executive (CE) considered incompatible with Hong Kong's interests or LegCo defeating a budget or any other important Government bill. Even then dissolution of LegCo could not take place until consensus through consultations had been attempted by the Government and had failed. She said that the Administration's justification of its interpretation was elaborated in detail in paragraphs 4 to 12 of LC Paper No. CB(2) 623/99-00(03).

23. The Chairman asked whether “LegCo refuses to pass a budget” referred to in Article 50 covered the situation where the Appropriation Bill was passed with amendment proposed by Members. DST responded that each case would need to be examined on its merits. For instance, if a substantial part of an Appropriation Bill’s head(s) of expenditure were amended to the effect that a department or a subvented organization would not be able to continue to operate, then this could amount in substance to a refusal by the LegCo to pass a budget introduced by the Government.

24. Legal Adviser (Legislative Affairs) of the Department of Justice (LA/DJ) said that whether an amendment to the Appropriation Bill amounted to a refusal was a good pointer to the underlining purpose of Article 50. It was difficult for the Administration to give members a list of circumstances that would definitely trigger off a move towards dissolution of LegCo. The fundamental purpose of Article 50 was to ensure that LegCo would not be dissolved without just cause.

25. The Chairman said that the Administration’s reply appeared to imply that whether a bill fell under “any other important bill” referred to in Article 50 would only be determined after its rejection by LegCo, instead of beforehand.

26. LA/DJ said that whether a bill was important would vary with time. It would be wrong for the Administration to tie everybody’s hands by giving examples of what was an important bill.

27. Mr CHEUNG Man-kwong said that a mechanism for determining whether a bill was important should be carefully considered and put in place as early as possible otherwise, in the event that a bill was rejected by LegCo, it might give rise to a constitutional crisis.

28. LA/DJ said that in his view, Article 50 spoke to the duty of CE not to try to dissolve LegCo without just cause. The question of what was an important bill was for CE to justify. Even if an important bill was rejected, there was no requirement in the Basic Law for LegCo to be dissolved. Referring to the phrase “CE may dissolve LegCo”, in Article 50, LA/DJ further said that the word “may” was used deliberately as CE had to take a judgement and risk. If CE was wrong, it could lead to his resignation. It was not for CE to decide whether a bill was important in an arbitrary fashion. Article 50 was a part of a chain of very important constitutional provisions. Dissolution of LegCo could only be triggered off by CE and he took the risk in deciding to do so. The Chairman held the view that the word “may” in the context of Article 50 could mean that CE “is hereby authorized” or “is empowered” to dissolve LegCo.

29. Mr CHEUNG Man-kwong said that given the constitutional

implications of Article 50, there should be stringent procedures in defining what an "important" bill was to prevent abuse of power. He expressed concern that if the question was not dealt with immediately, any dispute arising from the interpretation of the term in future might give rise to social unrest similar to that brought about by the Administration in seeking an interpretation of the Basic Law from the National People's Congress on the right of abode issue.

30. LA/DJ explained that there was no academic definition of the word "important". The meaning of "important bill" was not an absolute thing. One example was that the bill had to be important enough to justify the dissolution of LegCo only once in CE's term of office. He agreed with members that the question of what was an "important bill" should be studied in more detail. He said that the Administration should be able to produce some guidelines to assist members in understanding how the Administration was approaching the question of an important bill. However, the Administration's hands could not be tied by listing out the circumstances under which a bill was regarded as important. LA/DJ undertook to prepare a paper for members' consideration.

Adm

31. Ms Emily LAU said that the Administration should clarify when a bill would be regarded as "important". The Chairman said that an "unimportant" bill could become an "important" one after certain clauses had been amended. He considered that there should be checks and balances between the Executive and the Legislature. Quoting France as an example, he said that when an important bill or motion was to be introduced, a motion of censure would be moved with the signature of one-tenth of the members of the National Assembly. If the motion of censure was rejected, the text was considered to be adopted and no amendment could be made. The ruling party had to step down if the motion was passed. He opined that a decision on whether a bill was important was a political one and should be made before its introduction. He said that Hong Kong could consider devising a procedure similar to that of France.

32. LA/DJ said that the issue of checks and balances between the Executive and the Legislature was covered in subparagraph 3 of Article 52. In this regard, CE must resign if the new LegCo still refused to pass the original bill.

33. As regards the way forward, Legal Adviser said that if members agreed to the Administration's interpretation of the word "budget", the Panel should make a report to the House Committee. If the recommendation of the Panel was endorsed by the House Committee, the Committee on Rules of Procedure would proceed to examine the procedural arrangements for implementing Articles 50 and 51. Legal Adviser further said that he agreed to the view of the Administration on the matter. He had in fact provided the same advice to the Committee on Rules of Procedure.

Action
Column

Clerk 34. Members agreed with the Administration's interpretation that the word "budget" in the context of Articles 50 and 51 referred to the Appropriation Bill. A report would be made to the House Committee. On the question of "an important bill" referred to in Article 50, the Panel would continue discussion at a future meeting.

(Post-meeting note : A report was made to the House Committee on 11 February 2000)

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