

**Extract of minutes of meeting on Constitutional Affairs Panel
held on 19 June 2000**

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**IV. The question of "important bill" under Article 50 of the Basic Law
(LC Paper No. CB(2)2383/99-00(01))**

6. At the invitation of the Chairman, Deputy Secretary for Constitutional Affairs (DSCA) introduced the paper. DSCA said that the purpose of the paper was to highlight the issues that needed to be considered in relation to the question of "important bill" in BL 50. Given the constitutional implication of BL 50, the Administration needed more time to study the matter before forming a mature view. He invited members' views on the subject.

7. In response to Dr YEUNG Sum's question on the practice in France, DSCA explained that in France, bills were not classified as "important" or otherwise. Under the French constitution, the French Government could require that the texts of a bill be voted on in its entirety, rather than clause by clause at the end of the debate. The French Government could further make the passage of the bill an issue of confidence. The bill would be treated as having been passed unless the opposition could successfully initiate a motion of censure within 24 hours and secure the support of an absolute majority of the membership of the French National Assembly. Under the French system, there were no restrictions on how these powers were exercised.

8. Referring to paragraph 9 of the paper, Ms Emily LAU queried the rationale for stating that the "impact of Government operations brought about by a premature dissolution of the legislature" could be one of the factors in determining whether a bill was "important". DSCA explained that the paragraph sought to point out that the premature dissolution of the Council under BL 50 would have an impact on Government operations. This was a practical issue which the Government must address when BL 50 was invoked. The Chairman added that there was a mechanism for the calling of emergency meetings during dissolution of the Council.

9. Ms Emily LAU questioned the basis for the Administration's view in paragraph 10 that BL 50 could be construed as giving the CE "unfettered flexibility" to decide whether a bill was important or not. The Chairman asked whether the view was supported by legal advice. Some members considered that the Administration's interpretation of the provision was unfounded.

10. DSCA responded that given that there was no definition for the term "important bill" in the Basic Law and BL 50 stated that "if consensus cannot be reached after consultations, the CE may dissolve the LegCo", it was the preliminary view of the Administration that the CE was given "unfettered flexibility" to decide whether a bill was "important" or not. As pointed out in paragraph 5 of the paper, the Basic Law contained many provisions recognizing the important constitutional status of the legislature. The fundamental purpose of BL 50 was to provide a special measure to resolve a grave constitutional impasse between the executive and legislature. The impasse must be grave enough to justify dissolving the legislature mid-term. Moreover, there were procedural safeguards against arbitrary use of the power.

11. LA said that despite the fact that the view of the Administration was only preliminary, it would affect the focus of future discussion. The Administration should provide more justifications in support of the view that the CE should be given "unfettered flexibility". He pointed out that such an interpretation might imply that the CE's power was not subject to judicial review.

12. LA further said that given that BL 50 was a general provision, it was necessary for a set of criteria to be agreed upon in order to facilitate the implementation of the provision and not to undermine the checks and balances between the executive and the legislature. He agreed with the Administration that BL 50 was not intended as a provision to facilitate the CE to dissolve LegCo. Rather, it served to protect the operation of legislature from unnecessary and unreasonable interference.

13. Dr YEUNG Sum said that whether a bill was important could be determined by the executive; or the legislature; or the executive and legislature upon reaching a consensus. He asked which scenario the Administration was inclined to support. DSCA responded that the Administration had yet to form a view on the matter.

14. In response to Dr YEUNG Sum, LA said that in case of judicial review, the court would consider how the CE had exercised his power under BL 50. Under common law, CE's power should not be inconsistent with or exceed the scope of the empowering provision. He opined that it was preferable for the executive and the legislature to work out a mechanism to ensure that BL 50 would be implemented fairly.

15. Ms Emily LAU disagreed that the power to decide whether a bill was "important" should be conferred on the CE alone. Given that the Basic Law provided a checks and balances system between the executive and the legislature,

there should be a set of objective criteria for determining "important" bills. The Chairman pointed out that a bill could become an "important" bill after certain clauses had been amended. If a bill was only declared as "important" after rejection by LegCo, it could lead to constitutional crisis. Ms Emily LAU suggested that the Administration should advise LegCo whether a bill was "important" upon its introduction.

16. On Ms LAU's last point, Miss Margaret NG said that such an arrangement was impracticable, as it would imply bills other than the specified bills were not important. Some Members might also perceive labelling bills as "important" to be a threat imposed by the executive on the legislature. In case of a dispute between the executive and the legislature on whether a bill was "important", she said that either the court could refuse to give a judgment or the court would say that it was for the CE to decide whether a bill was important. She personally considered that it would be very difficult to come up with a set of objective criteria for determining whether a bill was "important" or not. She said that the Administration's view that the CE had "unfettered flexibility" to determine whether a bill was "important" or not was not unreasonable.

17. The Chairman said that he had no strong view if the CE was given "unfettered flexibility" in determining whether a bill was "important". However, since "unfettered flexibility" was subjective, it should only be exercised subject to certain procedural restrictions. Alternatively, objective criteria should be prescribed for determining whether a bill was "important". In any event, the nature of the bill should be made known to the public well in advance. Referring to the French experience where the passage of a bill could become an issue of confidence, the Chairman said that Hong Kong could consider devising a similar procedure whereby the responsible Government official e.g. the Chief Secretary for Administration or the policy secretary in charge of an "important" bill had to resign if a motion of censure was passed. In this respect, he suggested and members agreed that the Research and Library Services Division should be asked to conduct a research on the subject, making reference to overseas practices, during the summer recess. In response to the Chairman, DSCA undertook to conduct a more in depth study on the background of the French system.

Adm

(Post-meeting note : The Panel's request was conveyed to the Research and Library Services Division on 30 June 2000.)

18. Miss Margaret NG said that the matter might fall within the jurisdiction of the court in the event that BL 50 was not implemented in a fair and reasonable manner. She agreed with LA's earlier comment that the court might adjudicate on whether the procedure involved and the power so exercised were in compliance with BL 50. She also agreed with the Chairman that the Administration should in

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consultation with the legislature work out a procedure for determining the nature of a bill. She believed that a procedure could be developed by convention.

Adm 19. DSCA said that the Administration would give due consideration to the views expressed by members. He reiterated that the Administration needed more time for the study of the underlying principles in determining the nature of a bill. When a more mature view on the principles was developed, the Administration could address other interdependent issues such as procedure and timing. He undertook to keep members informed of any further progress on the matter.

20. The Chairman expressed concern that the Administration's paper had not addressed the question of whether a budget or an important bill which had been passed with amendments proposed by LegCo would be regarded as LegCo refusing to pass the budget or the bill under BL 50, as it was not passed in its original form. LA informed members that the Committee on Rules of Procedure had discussed the issue. The Committee noted that under the three readings procedure, the officer in charge of a bill had the right to withdraw the bill at the beginning of each reading. If the bill had been read the second time, it implied that the legislature had endorsed the merits and principles of the bill which could proceed to the committee stage and its third reading. The Committee considered that a decision of the Council to negative the second reading or third reading motion on an Appropriation Bill should be taken as the refusal of the Council to pass a budget. The Chairman said that the same understanding should apply to an "important" bill.

21. Mr CHEUNG Man-Kwong said that under the Basic Law, there were three scenarios which could lead to the dissolution of the Council: (a) LegCo refused to pass a budget; (b) LegCo refused to pass an important bill; and (c) CE refused to sign an ordinary bill passed the second time by LegCo. He expressed particular concern about CE's power under scenario (c). The Chairman said that the point raised by Mr CHEUNG, though important, was outside the scope of the Panel's discussion.

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