

Legislative Council Panel on Constitutional Affairs
Article 50 of the Basic Law
Meaning of Important Bill

INTRODUCTION

Members of the LegCo Constitutional Affairs Panel asked the Administration to set out its views on the procedural arrangements to implement the provision of Article 50 of the Basic Law in relation to an **important bill**.

BACKGROUND

2. Article 50 of the Basic Law (BL 50) provides that –

*“If the Chief Executive of the Hong Kong Special Administrative Region refuses to sign a bill passed the second time by the Legislative Council, or the Legislative Council refuses to pass a budget or **any other important bill** introduced by the government, and if consensus still cannot be reached after consultations, the Chief Executive may dissolve the Legislative Council.*

The Chief Executive must consult the Executive Council before dissolving the Legislative Council. The Chief Executive may dissolve the Legislative Council only once in each term of his or her office.”

3. At the Panel’s meeting on 19 June 2000, Members resolved that the Research and Library Services Division (RLSD) of the Legislative Council Secretariat should be requested to undertake a research on overseas experience in handling the subject of **important bill**. The focus of the research is the French system, which is claimed to be similar to the BL 50 provision. As supplementary information, the RLSD also studied the British practice in relation to confidence motions.

THE RLSD STUDY

4. The RLSD submitted its research report to the Panel at its meeting held on 7 May 2001. Copies of the report are sent to the Administration for reference.

5. The RLSD's report brings to light how the French system works. Article 49 of the French Constitution provides that –

“(1) The Prime Minister, after deliberation by the Council of Ministers, may make the Government's programme or possibly a statement of its general policy an issue of its responsibility before the National Assembly.

(2) The National Assembly may raise an issue of the Government's responsibility by passing a motion of censure. Such a motion shall not be admissible unless it is signed by at least one tenth of the members of the National Assembly. Voting may not take place within 48 hours after the motion has been introduced. Only the votes in favour of the motion of censure shall be counted; the motion of censure shall not be adopted unless it is voted for by the majority of the members of the Assembly. Except as provided in paragraph (3) below, a Deputy shall not sign more than three motions of censure during a single ordinary session and more than one during a single extraordinary session.

(3) The Prime Minister may, after deliberation by the Council of Ministers, make the passing of a bill an issue of the Government's responsibility before the National Assembly. In that event, the bill shall be considered adopted unless a motion of censure, introduced within the subsequent twenty-four hours, is carried as provided in paragraph (2) above.

(4) The Prime Minister may ask the Senate to approve a statement of general policy.”

6. The RLSD's in-depth study reveals the following features of the French systems –

(a) There are no provisions for bills to be classified as **important bills**, the non-passage of which will lead to a change of government or the dissolution of the legislature;

(b) In France, the Prime Minister is not required to give

prior notice before he engages the Government's responsibility. However, the National Assembly may raise a motion of censure in responses to this. The Prime Minister can engage the Government's responsibility on the spot provided that such an engagement has been deliberated by the Council of Ministers (i.e. the Cabinet); and

- (c) In France, a bill engaged under Article 49(3) of the Constitution will be considered adopted unless a motion of censure introduced within the subsequent 24 hours is carried as provided for in Article 49(2) of the Constitution.

7. The French system is not predicated on whether a bill is labelled as "important". We note that the consequence in France of the passage of a motion of censure is the resignation of the Government, leaving the National Assembly intact whereas the consequence of non-passage of an important bill in HKSAR is not the resignation of the Government, but may lead to the dissolution of the Legislative Council by the Chief Executive after consultation with the Executive Council. This encapsulates the main difference between BL 50 and Article 49 of the French Constitution. Nonetheless, under Article 52(3) of the Basic Law, the Chief Executive of the HKSAR must resign if the new Legislative Council still refuses to pass the original bill in dispute.

8. At the Panel's meeting held on 7 May 2001, the Chairman remarked that BL 50 was probably modelled on the French system, although the arrangement under BL was the dissolution of LegCo but not the tabling of censure motion as in the case of France. He also noted that, under the French system, the Prime Minister could invoke Article 49(3) at any time. He suggested that the issues which needed to be considered should be the definition of an **important bill** and the time when CE should declare a bill as "important". He also asked the Administration to respond to the report and discuss with the Panel at the next meeting.

ADMINISTRATION'S RESPONSE

9. We thank the RLSD for providing us with this detailed research into overseas practices in handling **important bills**. The report provides a useful reference for us to develop proposals for implementing

the provision of **important bill** under BL 50. In drawing up our proposals, we will take into account the general scheme of things in the Basic Law and have regard to Members' views and the actual situation of Hong Kong, and make reference to the French and British systems where appropriate including the differences between the provision of **important bill** under the BL in Hong Kong and the relevant provisions of the French Constitution.

10. We need to give full and careful consideration to the underlying principles in determining the nature of a bill. Questions such as whether **important bill** should be defined and when should the CE declare a bill as "important" for the purpose of BL 50 will have to be addressed. We will carefully study the RLSD report and report to the Panel as soon as we are ready.

Constitutional Affairs Bureau
19 May 2001