

LegCo Panel on Constitutional Affairs
Negative Procedure for Vetting of Subsidiary Legislation

Purpose

This paper sets out the preliminary views of the Administration on the negative procedure for vetting of subsidiary legislation.

Background

2. In considering the Securities (Margin Financing) (Amendment) Bill 1999, Members of the relevant Bills Committee expressed concern about the little time available for scrutiny of subsidiary legislation under the negative procedure. The Financial Services Bureau then advised that the current regime of negative vetting by the Legislative Council (LegCo) had been working well and saw no strong reason to change the present arrangement. The bureau, however, undertook to refer the matter to the Department of Justice and the Director of Administration with a view to considering if the time limit for the scrutiny of subsidiary legislation by way of negative vetting could be extended so as to provide more flexibility to the LegCo in handling complicated and lengthy subsidiary legislation.

3. The Bills Committee agreed to refer the matter to the Panel on Constitutional Affairs for follow-up with the Administration as appropriate.

Delegated authority for making subsidiary legislation

4. As Members are aware, the main reasons why subsidiary legislation has become a normal feature of law-making are pressure on the Legislature's time and the technical character of much modern legislation. It is recognised by both the Legislature and the Executive that the greater the number of details of an essentially subsidiary or procedural character which can be withdrawn from the floor of the Council, the more time will be available for the discussion of major matters of public concern.

5. LegCo has therefore delegated the power to make or amend subsidiary legislation (e.g. regulations, by-laws, orders and notices) under various ordinances to bodies including the Chief Executive-in-Council, Bureau Secretaries, heads of departments, corporations (e.g. the MTRC) and statutory bodies. However, such subsidiary legislation is subject to the covering approval of the LegCo, which may be given in either the positive resolution procedure or the negative procedure.

Negative vetting of subsidiary legislation

6. Under section 34 of the Interpretation and General Clauses Ordinance, subsidiary legislation which does not require the positive approval of the LegCo by way of a resolution must be laid on the table of the LegCo at the next meeting after it is gazetted. Any Member who finds such subsidiary legislation unsatisfactory may move a motion to amend it. If the motion is carried, the relevant subsidiary legislation is deemed to be amended as from the date of publication of the resolution in the Gazette. A motion for amendment has to be moved and carried at a meeting of the LegCo held not later than 28 days after the meeting at which the subsidiary legislation is laid. However, Members may, by resolution, extend the expiry period to the next LegCo sitting.

7. While it is legally in order for subsidiary legislation under negative vetting procedure in the LegCo to take effect upon gazettal, the Administration has, in view of provisions in section 34, made it a general rule to, as far as possible, set the commencement date of the particular subsidiary legislation at least 28 days plus 1 LegCo meeting after its tabling in LegCo.

Experience in the First SAR LegCo

8. According to the statistics kept by the LegCo Secretariat, 322 and 302 pieces of subsidiary legislation were tabled at the LegCo for negative vetting in 1998/99 and 1999/2000 legislative sessions respectively. Of which, 11 and 6 motions (covering 26 and 11 pieces of subsidiary legislation respectively) were moved to extend the scrutiny period.

Observations

9. We appreciate that as the Administration exercises the

authority delegated by the Legislature to make subsidiary legislation, the Legislature should be given sufficient time to perform its function, especially in the case of subsidiary legislation which are complicated and/or lengthy or have significant impact on the parties affected. On the other hand, having regard to the objective of the negative vetting arrangement and the volume of such subsidiary legislation, we are conscious of the fact that changes, if any, to the procedure should not generate unnecessary workload or distract Members from other more important legislative functions.

10. Statistics to hand indicate that the 28-day expiry period for the negative vetting procedure has worked reasonably well in most circumstances. We are, nevertheless, prepared to explore with Members whether and how the existing “extended by one-LegCo meeting” provision might be modified so that Members may as necessary have more time to examine subsidiary legislation.

Administration Wing
Chief Secretary for Administration’s Office
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