

INFORMATION NOTE

How Laws are Made

1. Introduction

1.1 Article 73(1) of the Basic Law of the Hong Kong Special Administrative Region (HKSAR) provides the Legislative Council (the Council) with the powers and functions to enact, amend or repeal laws in accordance with the provisions of the Basic Law and legal procedures.

2. Two types of bills

2.1 Article 62(5) of the Basic Law provides that the HKSAR Government has the powers and functions to draft and introduce bills, motions and subordinate legislation. Bills introduced by the Government are known as government bills.

2.2 Although most bills are government bills, Members of the Council may also introduce bills into the Council and such bills are known as Members' bills. Under Article 74 of the Basic Law, bills which do not relate to public expenditure or political structure or the operation of the Government may be introduced individually or jointly by Members of the Council. As for bills relating to government policies, the written consent of the Chief Executive of the HKSAR Government is required before they can be introduced by Members.

2.3 The number of bills introduced varies from year to year. For instance, 123 bills, including one Member's bill, were introduced into the Council in the 1998-99 session, while 19 bills, including four Member's bills, were introduced in the 2003-04 session.

3. What happens before a bill reaches the Legislative Council

Government bills

3.1 If the Government intends to propose new laws or amend existing laws for the implementation of a policy, the relevant policy bureau usually consults various parties that may be affected by the implementation of the proposal before a bill is drafted. Consultation papers and white bills are sometimes published to seek public opinion on important or controversial subjects. The policy bureau usually consults the relevant Panel of the Council as well so that Members may have an opportunity to express their preliminary views on the matter concerned.

3.2 Having considered comments received during such consultation, the policy bureau issues drafting instructions to the Department of Justice requesting the latter to put the proposal into the form of a bill. The bill will then be submitted to the Executive Council presided by the Chief Executive.¹

3.3 When the Chief Executive decides, on the advice of the Executive Council, to introduce the bill to the Council, a notice of the Government's intention to present the bill is sent to the Clerk to the Council. The Clerk, after the receipt of the bill for presentation, causes the text of the bill and its explanatory memorandum to be published in the Gazette² (unless the President of the Council decides otherwise) and sends every Member a copy of the bill and its explanatory memorandum, whereupon the bill is deemed to have been presented to the Council.

Member's bills

3.4 Before a Member introduces a bill, he or she may consult the parties affected by the bill and the relevant Panel of the Council.

3.5 The Member who intends to introduce a bill is responsible for the drafting of the bill. Neither the staff of the Secretariat of the Council nor the Department of Justice is responsible for drafting a Member's bill. A Member's bill is required to be accompanied by a certificate issued by the Law Draftsman of the Department of Justice that the bill conforms to both the form of bills³ according to the Rules of Procedure of the Legislative Council and the general form of Hong Kong legislation⁴.

¹ Article 56 of the Basic Law requires that the Chief Executive has to consult the Executive Council before introducing bills to the Legislative Council. If he or she does not accept the majority opinion of the Executive Council, he or she has to put the specific reasons on record.

² By the publication of the bill in the Gazette, the public is notified of the bill's content and the bill's upcoming first reading in the Council.

³ Rule 50 of the Rules of Procedure of the Legislative Council.

⁴ Rule 51(2) of the Rules of Procedure of the Legislative Council.

3.6 For a "private bill"⁵, the Member is required to publish the bill in two successive publications of the Gazette and the notice of the bill is required to be advertised twice in two daily newspapers published in Hong Kong, one being a Chinese language newspaper and the other an English one.⁶

3.7 For a Member's bill, whether private or not, the Member may send a notice of his or her intention to present the bill to the Clerk to the Council. The Clerk sends every Member a copy of the bill and its explanatory memorandum, whereupon the bill is deemed to have been presented to the Council. In the case of a non-private bill, the Clerk also causes the text of the bill and its explanatory memorandum to be published in the Gazette.

3.8 The President of the Council will rule on whether a Member's bill may be introduced. If a bill relates to public expenditure or political structure or the operation of the Government, it may not be introduced.⁷ If it relates to government policies, the written consent of the Chief Executive is required for its introduction.⁸

4. Three readings

4.1 After a bill has been gazetted, it has to pass through three readings in the Council before it is enacted. In unusual circumstances, the three readings may take place within one meeting. For example, the Hong Kong Reunification Bill passed through all three readings in the Council meeting held on 1st July 1997. On the other hand, some bills may take a long period of time going through the same process before they become laws. For instance, the Gambling (Amendment) Bill 2000 was first read in the Council in November 2000 but its Second Reading and Third Reading were not completed until one and a half years later, on 22nd May 2002. The time required for a bill to pass through the Council depends on its complexity and whether it is controversial.

First Reading

4.2 First Reading is the formal introduction of a bill into the Council, signifying the commencement of the legislative process in the Council. It entails nothing more than the Clerk to the Council reading out the short title of the bill at a Council meeting. No debate is allowed at this stage. The Council is then deemed to have ordered the bill to be set down for Second Reading.

⁵ As defined in section 2 of the Private Bills Ordinance (Cap. 69), a "private bill" means a bill which provides primarily for the particular interest or benefit of any individual, association or body corporate rather than the interest or benefit of the public and is not a Government measure.

⁶ Rule 51(6) of the Rules of Procedure of the Legislative Council.

⁷ Rule 51(3) of the Rules of Procedure of the Legislative Council, which reflects the provision of Article 74 of the Basic Law.

⁸ Rule 51(4) of the Rules of Procedure of the Legislative Council, which reflects the provision of Article 74 of the Basic Law.

Second Reading

4.3 Immediately following First Reading, the public officer or Member in charge of the bill moves "That the bill be read a second time" and gives a speech explaining the main purpose of the legislation. Normally, after Second Reading has been moved, debate is adjourned with the bill referred to the House Committee for scrutiny.

4.4 The House Committee has to decide, at its subsequent meeting, whether a Bills Committee should be formed to scrutinize the bill. A Bills Committee, if formed, will consider the general merits and principles, and the detailed provisions of and any necessary amendments to the bill.

4.5 A Bills Committee is usually formed to consider a controversial or complicated bill in detail. All Members, other than the President, may join a Bills Committee. The membership of a Bills Committee varies from no less than three Members to as many as a few dozens. There is no limit to the number of Bills Committees that may be formed but only 15 of them may be in operation at any one time. Bills Committees in excess of that number are placed on a waiting list and are activated one by one as those already in operation complete their work. When a Bills Committee has completed consideration of the bill allocated to it, it reports to the House Committee.

4.6 The Chairman of the House Committee subsequently advises the public officer or Member in charge of the bill on whether the House Committee supports the resumption of the Second Reading debate of the bill. After consultation with the Chairman of the House Committee, the public officer or Member in charge of the bill may give notice to resume the Second Reading debate. During the resumed debate, a Member, usually the Chairman of the Bills Committee, presents the views of the Bills Committee as a whole. Other Members may speak on the bill and indicate whether they support the bill or otherwise.

Committee stage

4.7 After the debate on Second Reading is completed, a vote is taken on the motion on Second Reading of the bill. If the motion is not passed, the bill cannot proceed further. If it is agreed to, the Council immediately sits as a "Committee of the whole Council" and goes through the clauses of the bill. The Chairman of the Bills Committee may move amendments on behalf of the Bills Committee. Individual Members and the public officer in charge may also move their own amendments. In some cases, the Government may agree with some of the Bills Committee's recommendations and the public officer in charge may move the amendments accordingly.

4.8 An amendment which, in the opinion of the President, has a charging effect may be proposed only by the Chief Executive, a designated public officer or a Member with the written consent of the Chief Executive.⁹

Third Reading

4.9 After the bill has passed through the "Committee of the whole Council" with or without amendments, the Council resumes and proceeds to Third Reading of the bill on a motion that "The bill be read the third time and do pass". Members still have an opportunity to speak on the contents of the bill. With the President's permission, amendments to correct errors or oversights may be made to the bill before the question for Third Reading of the bill is put by the President, but no amendments of a material character can be made. If Members vote in favour of the motion on Third Reading, the bill completes its passage in the Council.

5. Voting on bills

5.1 Voting is done by a show of hands unless a Member claims a division. If a Member claims a division, Members' votes are recorded and counted by an electronic voting system.

5.2 Under Annex II of the Basic Law, the passage of bills introduced by the Government requires at least a simple majority vote of the Members present.

5.3 The passage of motions, bills or amendments to government bills introduced by individual Members requires a simple majority vote of each of the two groups of Members present:

- (a) Members returned by functional constituencies; and
- (b) Members returned by geographical constituencies through direct elections¹⁰.

⁹ Rule 57(6) of the Rules of Procedure of the Legislative Council.

¹⁰ Before the third term of the Council, the passage of motions, bills or amendments to government bills by individual Members has required a simple majority vote of two groups of Members present, one including Members returned by functional constituencies, and the other including both Members returned by geographical constituencies through direct elections and by the Election Committee. Starting from the beginning of the third term of the Council, i.e. October 2004, no Member is returned by the Election Committee.

6. After voting

6.1 Under Article 76 of the Basic Law, a bill passed by the Council may take effect only after it is signed and promulgated by the Chief Executive. The Chief Executive promulgates the law enacted by the Legislative Council through publication in the Gazette.

6.2 Under Article 49 of the Basic Law, if the Chief Executive considers that a bill passed by the Council is not compatible with the overall interests of HKSAR, he may return it to the Council within three months for reconsideration. If the Council passes the original bill again by not less than a two-thirds majority of all Members, the Chief Executive must sign and promulgate it within one month. Otherwise, he is required to act in accordance with the provisions of Article 50 of the Basic Law, that is, if he still cannot reach consensus with the Council after consultations, the Chief Executive may dissolve the Council.

6.3 Under Article 17 of the Basic Law, laws enacted by the Council must be reported to the Standing Committee of the National People's Congress (NPC) for the record. Nonetheless, the reporting for record shall not affect the entry into force of such laws. If the Standing Committee of NPC, after consulting the Committee for the Basic Law of HKSAR under it, considers that a particular law enacted by the Council is not in conformity with the provisions of the Basic Law regarding affairs within the responsibility of the Central Authorities or regarding the relationship between the Central Authorities and HKSAR, the Standing Committee of NPC may return the law in question but shall not amend it. Any law returned by the Standing Committee of NPC shall immediately be invalidated. The invalidation shall not have retroactive effect, unless otherwise provided for in the laws of HKSAR.

7. Subsidiary legislation

7.1 A person (or an organization) may be conferred a power under an ordinance to make subsidiary legislation. Under the Interpretation and General Clauses Ordinance (Cap. 1), "subsidiary legislation" means "any proclamation, rule, regulation, order, resolution, notice, rule of court, bylaw or other instrument made under or by virtue of any Ordinance and having legislative effect".¹¹ In essence, subsidiary legislation is the detailed rules and regulations made by the Government, the court and other public bodies to provide for technical or procedural details necessary for the implementation of an ordinance.

¹¹ Section 3, Interpretation and General Clauses Ordinance (Cap.1).

7.2 The Interpretation and General Clauses Ordinance (Cap. 1) specifies two alternative procedures in which subsidiary legislation may be approved by the Council. Under section 34, subsidiary legislation shall be laid on the table of the Council after it is published in the Gazette. Unless another date is named, the subsidiary legislation commences on the date of its publication in the Gazette.¹² After the subsidiary legislation is laid on the table, the Council may amend it by resolution at a Council meeting held not later than 28 days. The period for amendment may be extended.¹³ This is commonly called the negative procedure (or negative vetting).

7.3 When the ordinance which empowers the making of subsidiary legislation provides that the subsidiary legislation shall be subject to the approval of the Council or contain words to the like effect, a public officer will move a motion in the Council to seek its approval of the subsidiary legislation made. The Council may approve or reject it by not passing the motion, or propose amendments to it. This procedure is set out under section 35 of the Interpretation and General Clauses Ordinance (Cap. 1), and is commonly called the positive procedure (or positive vetting).

7.4 An amendment proposed by a Member which, in the opinion of the President, has a charging effect may be moved only with the written consent of the Chief Executive.¹⁴

7.5 Should Members decide to consider a piece of subsidiary legislation in detail, the normal course is to form a subcommittee under the House Committee.

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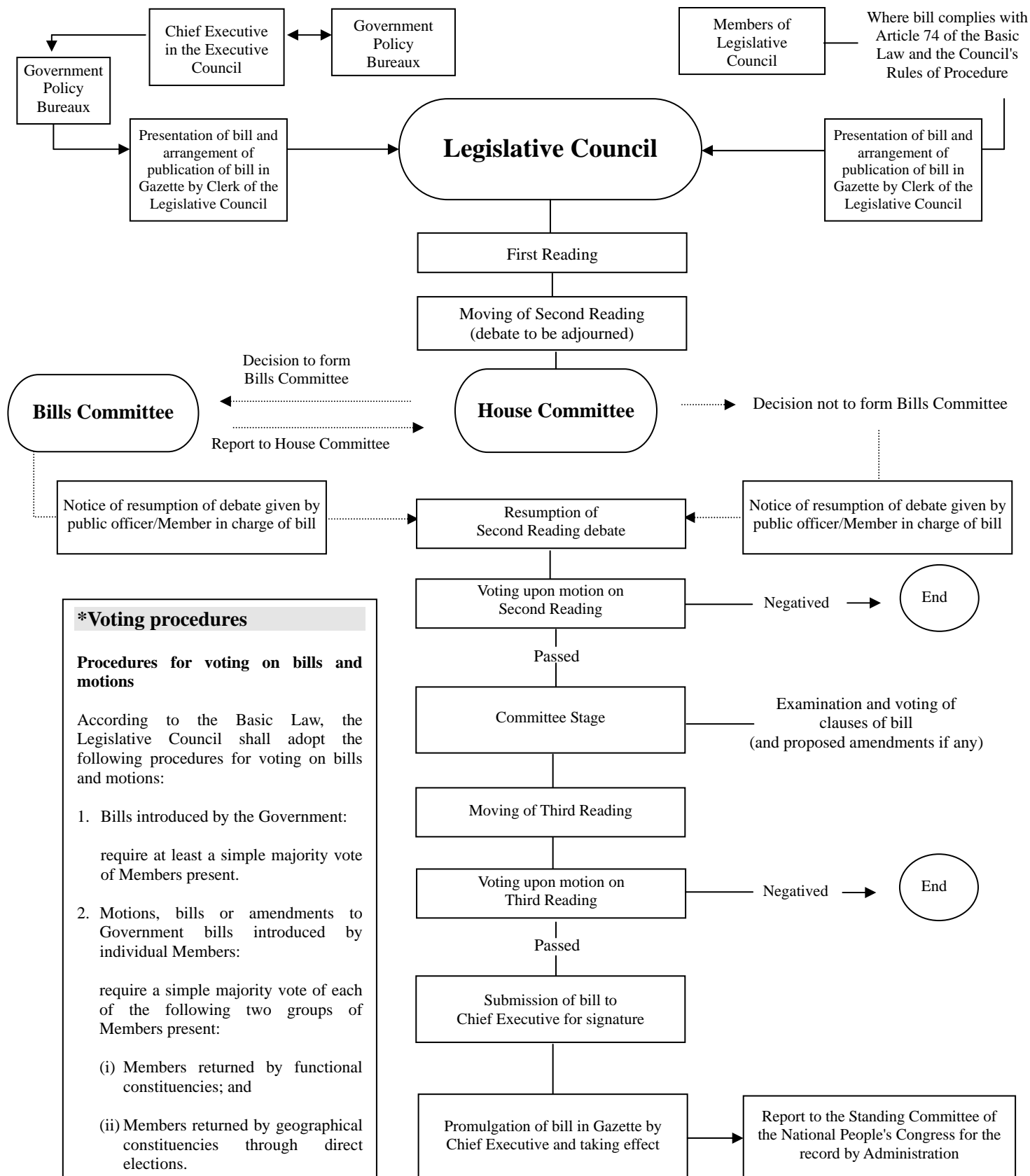
¹² Section 28, Interpretation and General Clauses Ordinance (Cap.1).

¹³ Section 34, Interpretation and General Clauses Ordinance (Cap.1).

¹⁴ Rule 31 of the Rules of Procedure of the Legislative Council.

Appendix I

Legislative process



***Voting procedures**

Procedures for voting on bills and motions

According to the Basic Law, the Legislative Council shall adopt the following procedures for voting on bills and motions:

1. Bills introduced by the Government:
 - require at least a simple majority vote of Members present.
2. Motions, bills or amendments to Government bills introduced by individual Members:
 - require a simple majority vote of each of the following two groups of Members present:
 - (i) Members returned by functional constituencies; and
 - (ii) Members returned by geographical constituencies through direct elections.