

立法會 *Legislative Council*

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Panel on Constitutional Affairs

Background Brief for meeting on 18 July 2005

The term “important bill” referred to in Article 50 of the Basic Law

Purpose

This paper summarises the past discussions held by Members of the Legislative Council (LegCo) on the term “important bill” referred to in Article 50 of the Basic Law (BL 50).

Background

2. Arising from the discussions on the interpretation of the word “budget” referred to in BL 50 and BL 51, the Panel, at its meeting on 20 December 1999, expressed concern about the meaning of “important bill” referred to in BL 50, and the circumstances under which LegCo may be dissolved by the Chief Executive (CE). The Panel subsequently discussed the issue at its meetings on 19 June 2000, 7 and 21 May 2001. In the course of its discussion, the Panel had made reference to the French and English practices detailed in the Research Report on “Parliamentary Handling of Non-Ordinary Bills” (RP10/00-01) prepared by the Research and Library Division of the LegCo Secretariat.

3. At the meeting of the Panel on 27 June 2005, members agreed that the issue should be followed up at its next meeting on 18 July 2005.

Purpose of BL 50

4. 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.”

5. The Administration has explained to the Panel that the fundamental purpose of BL 50 is to provide a special measure to resolve a grave constitutional impasse between the Executive and Legislature. BL 50 is not intended as a provision to facilitate CE to dissolve LegCo. Rather, it serves to protect the operation of the legislature from unnecessary and unreasonable interference. There are safeguards against arbitrary use of the power as demonstrated by the following –

- (a) BL 50 may be resorted to only once in each term of office of CE;
- (b) BL 50 requires CE to seek consensus after consultations before taking the decision to dissolve LegCo;
- (c) BL 50 also requires CE to consult the Executive Council before taking the decision to dissolve LegCo; and
- (d) BL 52(3) provides that if the newly elected LegCo decides the “impasse” question in the same way as its predecessor, CE must resign.

Concerns raised by Members

Definition of an “important bill”

6. In view of the constitutional implications of BL 50, members of the Panel consider it necessary to define “important bill” in order to prevent constitutional crisis.

7. The Administration has explained that given that the context of BL 50 is one of grave constitutional impasse, the question of whether a bill is “important” involved consideration not only of the bill itself, but also of various other factors such as constitutional, political, social, legal, economic, etc. The question of what specific factors need to be taken into account to decide if a bill is “important” involves consideration of many complex issues, including the impact on Government operations brought about by a premature dissolution of the Legislature. The actual determination of whether a bill is “important” or not, must, of necessity, depend on the particular circumstances at the time.

8. In response to the written question raised by Hon LEE Wing-tat concerning BL 50 at the Council meeting on 8 June 2005, the Administration has advised Members that it would not be appropriate to add further requirements or restriction

on the term “important bill” beyond the current provision of the Basic Law. In determining whether a bill is an “important bill”, it is expected that CE will consider the circumstances of each case and the overall interests of Hong Kong. The Administration’s written reply is in **Appendix I**.

Who to determine whether a bill is important

9. The Administration has advised the Panel that its preliminary view is that BL 50 can be construed as giving CE unfettered flexibility to decide whether a bill is “important” or not, given that BL 50 states that if consensus cannot be reached after consultations, CE may dissolve LegCo.

10. Members consider it dangerous for CE alone to decide whether a bill is “important”, as the defeat of such a bill may result in the dissolution of LegCo. They consider it necessary for the Administration to provide justification of its view that CE should be given “unfettered flexibility”, as the Basic Law provides a checks and balance system between the Executive and the Legislature. Some members have suggested that the party to determine whether a bill is important could be the Executive, or the Legislature, or the Executive and Legislature upon reaching a consensus. There should be stringent procedures in defining what is an “important bill”.

11. The Legal Adviser has advised the Panel that the Administration’s interpretation of CE having “unfettered flexibility” may imply that CE’s power is not subject to judicial review. In case of judicial review, the court will consider how CE has 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.

When to determine whether a bill is important

12. Some Panel members have pointed out that an “unimportant” bill can become an “important” one after certain clauses have been amended. In addition, if a bill is declared as “important” after rejection by LegCo, it can lead to constitutional crisis. Some members have enquired whether a bill could be labeled as an “important bill” upon its introduction. However, some other members consider that such an arrangement is impractical, as it will imply that bills other than the specified bills are not important. The labeling of a bill as “important” may also be perceived as a threat imposed on the Legislature to pass the bill.

Mechanism to implement BL 50

13. Some members of the Panel consider that it is necessary for a set of criteria to be agreed upon in order to facilitate the implementation of BL 50 and not to undermine the checks and balance between the Executive and the Legislature. These members consider it preferable for the Executive and the Legislature to work

out a mechanism to ensure that BL 50 will be implemented fairly. They stress the importance of putting in place a mechanism as early as possible, otherwise it may give rise to constitutional crisis in the event that a bill was rejected by LegCo.

14. Some members have expressed concern whether BL 50 can be invoked before the procedural arrangements for implementing the provision are put in place. They have enquired whether CE's decision to declare a bill as an "important bill" was judicious in court, before an agreed mechanism was put in place.

15. The Legal Adviser has advised members that any agreement made between the Administration and LegCo on the question of "important bill" is not a legally enforceable arrangement. There will not be any legal sanction if the agreement is broken. In places where universal suffrage is implemented, the ultimate sanction against breaching such an agreement will be through the result of a general election, when a person may be voted out of office.

16. The Administration has advised members that in drawing up the proposed arrangements to implement BL 50 in relation to an important bill, it will take into account members' views, the underlying principles in determining the nature of a bill, the general scheme of things in the Basic Law, the actual situation in Hong Kong, and make reference to overseas systems where appropriate. When a more mature view on the principles is developed, it can address other interdependent issues such as procedure and timing.

17. In reply to the written question raised by Hon LEE Wing-tat, the Administration has responded that CE would not exercise his power to dissolve LegCo lightly. The dissolution of LegCo by CE and the resignation of a CE involving LegCo are governed by stringent requirements in the Basic Law. It is not easy to trigger off the mechanism. When a CE decides to dissolve LegCo, he will need to consider the possibility that this may result in his resignation eventually (BL 52(3)). If LegCo passes again the bill returned to it by CE for reconsideration, or if it refuses to pass a budget or any other important bill introduced by the government, LegCo will also have to consider the possibility of dissolution. This reflects the principle as enshrined in the Basic Law that the Executive and Legislature should cooperate with one another while keeping each other in check.

Procedures and parties involved in consultations under BL 50

18. Hon LEE Wing-tat has also sought clarification about the procedures and parties involved in consultations under BL 50 in his written question.

19. The Administration has replied that BL 50 does not stipulate the procedural requirement to consult the Executive Council. BL 50 also contains no explanation on the procedures and people to be involved in the process of "consultations" in order to reach consensus. The purpose of consultations is to provide an

opportunity for the executive and legislative authorities to resolve their differences on the budget or the relevant important bill, before CE decides whether or not the power to dissolve LegCo should be exercised. It is believed that depending on the actual need and circumstances pertaining, both sides will consider using all possible communication channels between the executive and legislative authorities for the purpose.

Relevant papers

20. A list of the relevant papers which are available on the LegCo website in the **Appendix II**.

Council Business Division 2
Legislative Council Secretariat
13 July 2005

LEGCO QUESTION NO. 11
(Written Reply)

Asked by: Hon LEE Wing-tat

Date of meeting: 8 June 2005

Replied by : Secretary for Constitutional Affairs

Question

Article 50 of the Basic Law stipulates 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. In this connection, will the Government inform this Council of:

- (a) the bills referred to as "any other important bill" in the above article, and how "important bill" is defined;
- (b) the procedure and the parties involved in the "consultations" referred to in the above article; and
- (c) the procedure that the Chief Executive is required to follow for dissolving the Legislative Council, and whether the Chief Executive is only required to publish a notice of such a decision in the Gazette?

Reply

Madam President,

The question raised by the Hon Lee Wing-tat is primarily about Article 50 of the Basic Law (BL). To understand in a more thorough manner the constitutional arrangement designed for resolving major conflicts between the executive and legislative authorities in the BL, we should consider BL50 together with Articles 49 and 52 of the BL.

BL49 provides that if the Chief Executive (CE) considers that a bill passed by the Legislative Council (LegCo) is not compatible with the overall interests of Hong Kong, he may return it to the LegCo within three months for reconsideration. If the LegCo passes the original bill again by not less than a two-thirds majority, the CE must sign and promulgate it within one month or act in accordance with the provisions of BL50.

BL50 provides that if the CE refuses to sign a bill passed the second time by the LegCo, or the LegCo refuses to pass a budget or any other important bill introduced by the government, and if consensus still cannot be reached after consultations, the CE may dissolve the LegCo. The CE must consult the Executive Council (ExCo) before dissolving the LegCo. The CE may dissolve the LegCo only once in each term of his or her office.

BL52 provides that the CE must resign under three circumstances. Two of the circumstances are: (1) when, after the LegCo is dissolved because he twice refuses to sign a bill passed by it, the new LegCo again passes the original bill in dispute, but he still refuses to sign it; and (2) when, after the LegCo is dissolved because it refuses to pass a budget or any other important bill, the new LegCo still refuses to pass the original bill in dispute.

According to the above BL provisions, a CE is vested with the power to dissolve the LegCo under certain specified circumstances, while a CE must resign under certain specified circumstances involving the LegCo. This reflects the principle as enshrined in the Basic Law that the executive and legislative authorities should cooperate with one another while keeping each other in check. However, the dissolution of the LegCo by the CE and the resignation of a CE involving the LegCo are governed by stringent requirements in the BL. It is not easy to trigger the mechanism. When a CE decides to dissolve the LegCo, he will need to consider the possibility that this may result in his resignation eventually. If the LegCo passes again the bill returned to it by the CE for

reconsideration or if it refuses to pass a budget or any other important bill introduced by the government, LegCo will also have to consider the possibility of dissolution. This arrangement of checks and balances ensures that the CE will not exercise his power to dissolve the LegCo lightly; likewise, the LegCo will not pass again the bill returned for reconsideration or refuse to pass a budget or any other important bill lightly.

Regarding the first part of the question, BL 50 contains no further elaboration on what "other important bill" entails. It would, thus, not be appropriate to add further requirements or restrictions on the term "important bill" beyond the current provision of the Basic Law. In determining whether a bill is an "important bill", we expect that the CE will consider the circumstances of each case and the overall interests of Hong Kong.

Regarding the second part of the question, BL50 contains no further explanation on the procedures and people to be involved in the process of "consultations". The purpose of consultations is to provide an opportunity for the executive and legislative authorities to resolve their differences on the budget or the relevant important bill, before the CE decides whether or not the power to dissolve LegCo should be exercised. Depending on the actual need and circumstances pertaining, we believe that both sides will consider using all possible communication channels between the executive and legislative authorities for the purpose. These may include the relevant bills committee which involves LegCo Members and officials of the SAR Government.

Regarding the third part of the question, BL50 empowers the CE to dissolve the LegCo under certain specified circumstances. This article provides that the CE must consult the ExCo before dissolving the LegCo. There is no other procedural requirement stipulated in the BL.

The term “important bill” referred to in Article 50 of the Basic Law

Relevant Papers/Documents

<u>Council/Committee meeting</u>	<u>Meeting Date</u>	<u>Papers/Motion/Council Question</u>
Panel on Constitutional Affairs	20 December 1999	Minutes of meeting [LC Paper No. CB(2)1394/99-00]
Panel on Constitutional Affairs	19 June 2000	Paper on "Article 50 of the Basic Law" provided by the Administration [LC Paper No. CB(2)2383/99-00(01)]
		Minutes of meeting [LC Paper No. CB(2)2565/99-00]
Panel on Constitutional Affairs	7 May 2001	Research Report on "Parliamentary Handling of Non-Ordinary Bills" prepared by the Research and Library Services Division [RP10/00-01]
		Minutes of meeting [LC Paper No. CB(2)1978/00-01]
Panel on Constitutional Affairs	21 May 2001	Paper on "Article 50 of the Basic Law – Meaning of Important Bill" provided by the Administration [LC Paper No. CB(2)1601/00-01(01)]
		Minutes of meeting [LC Paper No. CB(2)2208/00-01]
Legislative Council	8 June 2005	Written question on "Operation of Article 50 of the Basic Law" raised by Hon LEE Wing-tat [Hansard]