

Legislative Council Panel on Constitutional Affairs

Article 50 of the Basic Law

Purpose

This paper sets out the Government's position on the scope covered by the term "important bill" in Article 50 of the Basic Law (BL).

Background

2. 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 previous meetings of the Constitutional Affairs Panel, Members exchanged views with the Administration on what would constitute an “important bill” under BL50. The Administration undertook to study the matter further and revert to the Panel in due course.

Constitutional Arrangements for Resolution of Conflicts between Executive and Legislative Authorities

4. BL50 is part of a series of constitutional provisions provided for resolving major conflicts between the executive and legislative authorities. To understand in a more thorough manner how the whole arrangement works, BL50 should be considered together with Articles 49 and 52 of the BL.

5. 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.

6. 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.

7. 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.

8. According to the above BL provisions, on the one hand CE is vested with the power to dissolve the LegCo under certain specified circumstances. On the other hand, CE must resign under certain specified circumstances involving the LegCo. This reflects the principle as enshrined in the BL that the executive and legislative authorities should cooperate while keeping each other in check. The dissolution of LegCo by CE and the resignation of CE involving LegCo are governed by stringent requirements in the BL. The mechanism is not easily triggered. When CE decides to dissolve LegCo, he will need to consider the possibility that this may result in his resignation eventually. 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 arrangement of checks and balances ensures that CE will not exercise his power to dissolve LegCo lightly; likewise, LegCo will not lightly pass again the bill returned for reconsideration or refuse to pass a budget or any other important bill.

What constitutes an “important bill”

9. There has been suggestion that CE should have reference to a set of criteria for the purpose of determining whether a bill is an “important bill”.

10. CE has the constitutional obligation of implementing the BL. In the absence of any further elaboration in BL50 on the meaning of “important bill”, it is a matter for CE to decide whether a particular bill is an “important bill”. However, CE will not invoke BL50 lightly, because of the possible political consequence explained above and other safeguards built into the provision — prior consultation with ExCo is required and the bill has to be important enough to justify the dissolution of LegCo. CE may dissolve LegCo only once in each term of office. In practical terms, factors that have to be taken into consideration to determine whether a bill is an “important bill” would vary from case to case. It would be difficult to set out in advance a set of specific criteria which could cater for all the likely circumstances. Therefore, we are of the view that it would not be appropriate to add further requirements or restrictions on the term “important bill” beyond the current provision of the BL. 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.

Constitutional Affairs Bureau
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