

Arrangements arising from Articles 50 and 51 of the Basic Law

Introduction

The Committee on Rules of Procedure of the Legislative Council (LegCo) have earlier examined the arrangements arising from Articles 50 and 51 of the Basic Law (extract at Annex). In the course of examining such arrangements, the Committee consider that a number of issues need to be clarified before the procedural arrangements for implementing the two Articles can be worked out and decide that the Constitutional Affairs Panel should be asked to examine the issues.

The Committee's View

2. One of the issues identified by the Committee is the interpretation of the term "budget" in the context of the Basic Law. The word "budget" appears in various Articles of the Basic Law. While the word "budget" may be interpreted differently in the context of each of the Basic Law Articles, the Committee is of the view that the reference to "budget" in the two Articles appears to be confined to the Appropriation Bill. The Committee, however, note that "budget" has often been taken to mean both expenditure and revenue. In the "Budget Speech" made by the Financial Secretary when moving the Second Reading of the Appropriation Bill, both expenditure and revenue proposals are covered. The scope of debate of the Bill also covers both the expenditure and revenue proposals, although the motion being spoken or voted on relates to the Second or Third Reading of the Appropriation Bill. There is therefore a question of whether the word "budget" in the context of the two Articles refers to the Appropriation Bill, or the Revenue Bill (or revenue proposals in any other forms), or both.

3. The Committee also note that Section 7(1) of the Public Finance Ordinance (Cap. 2) provides that LegCo may authorize expenditure by resolution, in advance of an Appropriation Ordinance, for services of the Government in respect of a financial year to be charged on the general revenue subject to such limitations and conditions as may be specified in the resolution. The Committee also wish to clarify whether this provision also applies to the refusal of a "budget" by LegCo, and if the answer is in the negative, whether the Government has any intention to introduce legislative amendment to the Public Finance Ordinance to provide for the implementation of Article 51 if required.

Administration's Response

4. On the issue of the interpretation of the word "budget" in Articles 50 and 51 of the Basic Law, the Administration is of the view that, taking into account the legal requirements governing the management of public finance and the established practices over the years in seeking the legislature's approval of expenditure, the term "budget" in the context of Articles 50 and 51 of the Basic Law refers to the expenditure side only (i.e. the Appropriation Bill). However, it should be noted that the term appears in other Articles of the Basic Law where it may carry a wider meaning and the term should be interpreted in the context of each of the Basic Law Articles in which it appears.

5. On the issue of Section 7(1) of the Public Finance Ordinance, this particular provision empowers the Government to seek funds by means of a LegCo resolution in advance of an Appropriation Ordinance. The authority to expend funds under the resolution is only subject to such limitations and conditions as specified in the resolution. The resolution will continue in effect if LegCo does not pass the Appropriation Bill, until a time when the Government has exhausted the provisions provided under the resolution. In other words, the legislative intent and purpose of section 7(1) of the Public Finance Ordinance may cover the scenario contemplated in the first sentence of Article 51 of the Basic Law where the CE may apply to the LegCo for provisional appropriations if LegCo refuses to pass the budget introduced by the government. In this regard, it is not considered necessary to make any legislative amendment or elaboration on the Public Finance Ordinance.

Finance Bureau/
Department of Justice/
Administration Wing
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Extract of the Basic Law

Article 50

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.

Article 51

If the Legislative Council of the Hong Kong Special Administrative Region refuses to pass the budget introduced by the government, the Chief Executive may apply to the Legislative Council for provisional appropriations. If appropriation of public funds cannot be approved because the Legislative Council has already been dissolved, the Chief Executive may, prior to the election of the new Legislative Council, approve provisional short-term appropriations according to the level of expenditure of the previous fiscal year.