

立法會 *Legislative Council*

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Paper for the House Committee meeting on 11 February 2000

Report of the Panel on Constitutional Affairs on Articles 50 and 51 of the Basic Law

Background

In early 1999, the Committee on Rules of Procedure considered the procedural arrangements arising from Articles 51 of the Basic Law (BL) in relation to the Chief Executive (CE)'s application to the Legislative Council (LegCo) for provisional appropriations if LegCo refuses to pass the budget introduced by the government. As BL51 is consequent on BL50, the Committee considers it necessary to first clarify the scope of the term "budget" in the context of these articles before it could proceed to the deliberation of the procedures involved. On 16 April 1999, the Committee recommended and the House Committee agreed that the matter should be followed up by the Panel on Constitutional Affairs.

2. Following discussion, the Panel agreed with the Administration that the term "budget" in the context of BL50 and 51 refers to the Appropriation Bill only. The Panel made a report to the House Committee on 8 October 1999 (LC Paper No. CB(2)17/99-00). However, some Members considered that as the matter involved important and complex constitutional issues, it should be further deliberated by the Panel. This was agreed to.

Purpose

3. The matter was discussed by the Panel on 16 November 1999 and 21 December 1999. This paper reports on the deliberations of the Panel on the interpretation of the term "budget" in BL50 and 51 and other related issues.

Deliberations of the Panel

The term "budget" in BL50 and 51

4. Some members are of the view that the term "budget" should cover both expenditure and revenue, and that the Administration's arbitrary interpretation of the

term to cover only the expenditure side of the budget (i.e. the Appropriation Bill) is tantamount to limiting LegCo's power in monitoring Government's financial proposals.

5. In response to the request of the Panel, the Administration has provided detailed justifications in support of its interpretation. The Panel notes that the term "budget" is not defined in the Basic Law nor in the laws of Hong Kong, and that the situations described in BL50 and 51 have not occurred to date. The Administration's interpretation of the term takes account of the context in which the term is used, the purposes of the provisions concerned, and the established practice in seeking LegCo approval of expenditure and revenue proposals.

Constitutional purpose of BL50

6. According to the Administration, it adopts a purposive approach in the interpretation of the Basic Law. In its view, the main constitutional purpose of BL50 is to protect the Legislature from arbitrary dissolution. Dissolution of LegCo cannot be achieved except in very limited circumstances, i.e. LegCo twice passing a bill which CE considers incompatible with the overall interests of the Special Administrative Region (the second passing must be by at least a two-thirds majority of all the Members of LegCo) or LegCo refusing to pass a budget or any other important Government bill. Even then dissolution of LegCo cannot take place until consensus through consultations has been attempted by Government and has failed.

LegCo's approval of expenditure and revenue proposals

7. The Administration has also analyzed the issue in the light of the legal requirements governing the management of public finances and the established practice over the years in seeking LegCo approval of expenditure and revenue proposals.

8. The Administration has explained that expenditure for government activities for a financial year is voted for annually through the passage by LegCo of the Appropriation Bill. The Financial Secretary's Budget Speech is delivered in moving the Second Reading of the Appropriation Bill. Under sections 5 and 6 of the Public Finance Ordinance (PFO), FS is required to lay before LegCo the annual estimates of expenditure which shall be deemed to be approved to the extent that they are provided for in the Appropriation Ordinance. On the other hand, there is no provision in the PFO to require the separate approval of the annual estimate of revenue. Although the estimates of revenue are laid before LegCo on Budget Day, they are not submitted for approval.

9. The Administration has also explained that non-passage of an Appropriation Bill warrants some transitional arrangements to enable government services to continue to operate. However, similar transitional or contingency requirements are

not required for the revenue aspect of the Budget. Regardless of the outcome of the proposed legislation for revenue collection, the Government continues to have the legal power to tax or charge based on legislation currently in force and this existing revenue base would normally account for the bulk of the Government's income in the year.

10. In the Administration's view, since only the Appropriation Bill is required to be passed by LegCo in terms of the "estimates" (預算), the term "budget" (財政預算案) in the context of BL50 would appear to refer to the Appropriation Bill to the exclusion of any revenue-related legislative proposals. This interpretation is reinforced by BL51, which provides for the situation where if LegCo refuses to pass the "budget" introduced by the Government, CE may apply to LegCo for provisional appropriations. The focus of BL51 is hence also on appropriation of public funds for the purpose of expenditure.

Revenue-related legislative proposals

11. The Administration has further explained that the approval of revenue proposals (not estimates of revenue) is subject to a separate legislative procedure as provided for under the relevant legislation to which the particular revenue measure relates. A single omnibus Revenue Bill was introduced in the 1999 Budget exercise to allow Members to consider all revenue proposals as one complete package. Prior to that, implementation of revenue proposals in the Budget may take the form of amendment bills, subsidiary legislation or LegCo resolution as separately provided for under the relevant legislation.

12. The Administration has pointed out that if the term "budget" in BL50 is construed to include revenue bill(s), this implies that CE may need to trigger the consultation mechanism (and if this fails to produce a consensus, CE may dissolve LegCo) when LegCo refuses to pass one or more of the legislative proposals.

Conclusion

13. Given the above considerations, the Administration maintains the view that the term "budget" in BL50 and 51 refers to the Appropriation Bill. It also reassured members that the interpretation is not adopted with a view to limiting LegCo's power in scrutinizing Government's revenue collection proposals.

The term "budget" in various Articles of the Basic Law

14. The Panel has noted that there are discrepancies in the Chinese equivalent of the English term "budget" in various Articles of the Basic Law. In response to members' request, the Administration has provided its interpretation of the term "budget" and its Chinese equivalent in the context of these Articles.

BL48(3)

15. The term "budget" is used twice in BL48(3). The Administration has explained that in the Chinese text of BL48(3), the first term of "budget" is (財政預算案) which CE will sign after it is passed by LegCo. This clearly refers to the Appropriation Bill under the existing arrangement. The second term of "budget" in BL48(3) in the Chinese text is (財政預算) and juxtaposed with the term "final accounts" (決算), and should more appropriately refer to the budget estimates including both revenue and expenditure. The final accounts are the audited accounts of the HKSAR Government which includes both revenue and expenditure.

BL50, 51 and 52(3)

16. In the Chinese text of BL50 and 51, the Chinese equivalent of the term "budget" is "財政預算案" which clearly refers to a bill to be passed by LegCo. The Administration considers that BL50, 51 and 52 are sequential and related. In the event of refusal of LegCo to pass a budget and possible dissolution of LegCo following failure of consensus through consultations under BL50, the consequential action that needs to be undertaken to ensure continued operation of the Government as provided for under BL51 is for CE to apply to LegCo for provisional appropriations. There should be no doubt that appropriations refer to the voting of expenditure, normally through the annual Appropriation Bill.

BL62(4), 73(2) and 107

17. The Administration has advised that BL62(4), 73(2) and 107 deal respectively with CE's reporting requirement to the Central People's Government, the role of the Executive Authorities and the Legislature and the principles in public finances. The term "budget" (財政預算 in Chinese) in these Articles would clearly have its ordinary and wider meaning of the Government's annual estimate of revenue and expenditure.

Refusal by LegCo to pass a budget

18. The Panel has also discussed whether "LegCo refuses to pass a budget" referred to in BL50 covers the situation where the Appropriation Bill is passed with amendments made by Members.

19. The Administration has advised that while each case would need to be examined on its merits, it is of significance to note that BL50 refers to a "budget introduced by the government". Taking a purposive approach to the interpretation of these words, it is clear that if, for example, a substantial part of an Appropriation Bill's head(s) of expenditure were rejected in Committee of the whole Council this could amount in substance to a refusal by the LegCo to pass a budget introduced by the Government.

The term "important bill" in BL50

20. The Panel has noted that the procedures under BL50, 51 and 52 would also apply in the case of LegCo refusing to pass any other important bill. Members have sought clarification from the Administration the basis and authority for determining whether a bill falls under "any other important bill" referred to in BL50, and whether the revenue bills are considered to be important bills. Some members are of the view that all revenue bills are important.

21. The Administration has advised that in the event of rejection of a bill by LegCo and subsequent failure to reach consensus under BL50, CE would consider whether the bill was sufficiently important to justify taking the step of dissolving of LegCo. Before exercising his power of dissolution CE must also consult the Executive Council. As to whether a revenue bill is an important bill, it will depend on the objective, effect and implications of the bill. The assessment should not necessarily be confined to the revenue implications but should more broadly take into account its impact on the HKSAR's economy, public finance, monetary affairs, etc., especially in the light of other Basic Law provisions, for example, BL107 on avoiding fiscal deficits, BL108 on low tax policy and BL109 on the maintenance of Hong Kong as an international financial centre.

22. Members consider that whether a bill is important should be determined and declared prior to its introduction into LegCo, and not after its rejection by LegCo. Given the constitutional implications of BL50, they also consider that there should be a mechanism for defining whether a bill is an "important bill" to avoid disputes or abuse of power by CE.

23. The Administration has explained that whether a bill is important would vary with time and it would be wrong to tie everybody's hands by giving concrete examples of what is an important bill. However, one point worthy to note is that the bill has to be important enough to justify the dissolution of LegCo only once in CE's term of office. In view of members' concern over the issue, the Administration has agreed to consider producing some guidelines to assist members in understanding how the Administration is approaching the question of an important bill.

24. The Panel will further deliberate the question of an important bill referred to in BL50.

Recommendation of the Panel

25. The Panel recommends that the Administration's interpretation that the term "budget" in BL50 and 51 refers to the Appropriation Bill be accepted. In this respect, the Panel notes that Legal Adviser shares the view of the Administration.

Advice sought

26. Members are invited to consider the Panel's recommendation in paragraph 25.

Legislative Council Secretariat
9 February 2000