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Paper for House Committee meeting on 8 October 1999

Panel on Constitutional Affairs

Arrangements arising from Articles 50 and 51 of the Basic Law

Purpose

This paper reports on the deliberations of the Panel on Constitutional Affairs concerning arrangements arising from Articles 50 and 51 of the Basic Law.

Background

2. On 16 April 1999, the Committee on Rules of Procedure made a report on a number of issues to the House Committee, including whether the current provisions in the Rules of Procedure were adequate for the implementation of Articles 50 and 51 of the Basic Law (an extract of the Articles is in the **Appendix**). The Committee recommended that the subject matter be considered by the Panel on Constitutional Affairs as the provisions in both Articles were related to constitutional issues. This was agreed to by the House Committee.

Deliberations of the Panel

Interpretation of the word "budget" in Articles 50 and 51

3. The word "budget" appears in Articles 48(3), 50, 51, 52(3), 62(4), 73(2) and 107 of the Basic Law, and it is not defined in the Basic Law nor in the Laws of Hong Kong. The Committee on Rules of Procedure notes that "budget" has often been taken to mean both expenditure and revenue. There is therefore a question of whether the word in the context of Articles 50 and 51 refers to the Appropriation Bill, or the Revenue Bill (or revenue proposals in any other forms), or both. The Administration has been invited to clarify the scope of "budget" in the context of Articles 50 and 51.

4. 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 word "budget" in the context of Articles 50 and 51 of the Basic Law refers to the Appropriation Bill only. However, where the term appears in other Articles of the Basic Law, it may carry a wider meaning and should therefore be interpreted in the context of each of the other Articles in which it appears.

5. The Panel agrees to the interpretation of the Administration. It is also of the view that the Revenue Bill could fall under "any other important bill introduced by the government" as stipulated in Article 50.

Section 7(1) of the Public Finance Ordinance (PFO) (Cap. 2)

6. Section 7(1) of PFO provides that the Legislative Council (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. Clarification has also been sought from the Administration as to whether this provision covers the situation where the Council refuses to pass a "budget", and if not, whether the Administration has any intention of introducing legislative amendment to PFO for the implementation of Article 51.

7. The Administration is of the view that the legislative intent and purpose of section 7(1) of PFO may cover the scenario contemplated in the first sentence of Article 51 where the Chief Executive may apply to LegCo for provisional appropriations if LegCo refuses to pass the budget introduced by Government. The Administration does not consider it necessary to make any legislative amendment to the PFO.

Rules of Procedure

8. The Panel has also noted that if consultation and consensus can be reached after a "budget" is voted down, it would be necessary to introduce a new "budget" into LegCo. The new "budget" would likely contain provisions which are substantially the same as the original "budget". Under the circumstances, existing provisions in the Rules of Procedure might affect the re-introduction of the Appropriation Bill. For instance, Rule 32(2) states that "where the Council has taken a decision on a specific question and the question has been decided in the negative, no further motion shall be moved in relation to that question during the current session".

9. Since Article 51 provides for the Chief Executive to apply to LegCo for provisional appropriations, the Panel takes the view that it is for Members to consider whether it is necessary to provide an exception under the Rules of Procedure to allow the re-introduction of the Appropriation Bill. The Panel recommends that the matter should be followed up by the Committee on Rules of Procedure.

Advice sought

10. Members are invited to take note of the deliberations of the Panel as set out in this paper.

Legislative Council Secretariat

5 October 1999

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.