

Legislative Council Panel on Constitutional Affairs
Article 50 of the Basic Law

INTRODUCTION

Members of the LegCo Constitutional Affairs Panel asked the Administration to clarify the meaning of “important bill” in Article 50 of the Basic Law.

BACKGROUND

BL50 provides that –

2. *“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 the CA Panel meeting on 20 December 1999 Members discussed in detail with the Administration the interpretation of the term “budget” referred to in BL50 (and 51). Whilst general agreement was reached on that matter the discussion also touched on the meaning of “important bill”. Some Members expressed the following views –

- (a) a mechanism for determining whether a bill was important should be carefully considered and put in place as early as possible;
- (b) given the constitutional implications of BL50 there should be stringent procedures in defining what was an “important bill”;
- (c) the Administration should clarify when a bill would be regarded as “important”; and
- (d) Hong Kong could consider devising a procedure similar to that of France.

4. In response to the above views the Administration explained its understanding of the context of “important bill” within the relevant Basic Law provisions and undertook to prepare a paper for Members’ consideration.

NATURE OF THE ISSUES

5. The Basic Law contains many provisions recognizing the important constitutional status of the Legislative Council. In particular, by BL66, the Council shall be “the legislature of the Region”, whilst BL69 provides that each Council’s term of office shall run for four years, from the second term onwards. It is implicit under BL70 that the Legislative Council cannot be dissolved during its four-year term of office except in circumstances prescribed in the Basic Law. These circumstances are prescribed only in BL50.

6. Under BL50, there are three scenarios under which the Chief Executive may dissolve the Legislative Council, if consensus cannot be reached after consultations:

- (a) Legislative Council has twice passed a bill which the Chief Executive refuses to sign;
- (b) Legislative Council refuses to pass a budget; or
- (c) Legislative Council refuses to pass any other important bill.

7. The significance of BL50 is further demonstrated by the following:

- (a) BL50 may be resorted to only once in each term of office of the Chief Executive;
- (b) BL50 requires the Chief Executive to seek consensus with the Legislature before taking the decision to dissolve;
- (c) BL50 also requires the Chief Executive to consult Executive Council before taking the decision to dissolve; and
- (d) If the newly elected Legislative Council decides the “impasse” question in the same way as its predecessor the Chief Executive must resign (BL52(3)).

SPECIFIC RESPONSE

The context of the “important bill” provision BL50

8. The context of BL50 is that it is a ‘special’ measure to resolve a grave constitutional impasse between the executive authorities and the legislature. The impasse must be grave enough to justify dissolving the legislature mid-term. And if after the legislature is dissolved, the new legislature still refuses to pass the original bill in dispute, then according to BL52, the Chief Executive must resign.

9. Given that the context is one of grave constitutional impasse, it must follow that the question of whether a bill is “important” involves 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 impact on Government operations brought about by a premature dissolution of the legislature.

10. The actual determination of whether a bill is “important” or not, must, of necessity, depend on the particular circumstances at the time. As circumstances may change over time, we need to consider carefully how to take into account changing circumstances when deciding on whether a bill is “important”. Moreover, in the course of our deliberation, we also note that BL50 can be construed as giving the Chief Executive unfettered flexibility to decide whether a bill is “important” or not. This is a factor we need to consider carefully before coming to a conclusion.

11. We need to give full and careful consideration to the underlying principles in determining the nature of a bill. After we have developed a more mature view on the principles, we could then address other interdependent issues such as mechanism and timing. While we are equally anxious to put ourselves in a position of being able to give more definite answers to questions previously raised by Members, we believe that it would be imprudent of us to be rushed into giving inadequate responses at this stage.

The French Experience

12. Under Article 44§3 of the French Constitution, the French Government can require that the texts of a bill be voted upon in its entirety, rather than clause by clause at the end of the debate. Under Article 49§3 of the French Constitution, the French Government can further make the passage of the bill an issue of confidence. The bill would be treated as having been passed unless the opposition could successfully initiate a motion of censure within 24 hours and secure the support of an absolute majority of the membership of the French National Assembly.

13. Under the French system, there are no restrictions on how these powers are exercised. It is not necessary for a bill to be “important” before it can be made a vote of confidence. Nor is there limitation on the frequency which a Government can initiate such a measure during a particular period.

WAY FORWARD

14. We will continue to study the relevant issues and will keep Members informed of any further progress on the matter.

Constitutional Affairs Bureau
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