

Information note on presentation of bills by Members of the Legislative Council

Purpose

Under Article 74 of the Basic Law ("BL 74"), Members of the Legislative Council ("LegCo") may introduce bills into LegCo in accordance with the provisions of BL and legal procedures. This note sets out the practice and procedure for presentation of bills by Members.

Relevant provisions to note before presentation

2. Before a bill is introduced into LegCo, a Member may wish to note the following statutory requirements that are relevant to the practice and procedure for presentation of bills by Members.

3. The bill to be presented by a Member may fall within the definition of "private bill" as defined in the Private Bills Ordinance (Cap. 69). Its section 2 defines a "private bill" as a bill which "provides primarily for the particular interest or benefit of any individual, association or body corporate rather than the interest or benefit of the public" and which "is not a Government measure".

4. Section 4(1) of the Official Languages Ordinance (Cap. 5) provides that all Ordinances shall be enacted and published in both official languages, i.e. Chinese and English, save for a direction given by the Chief Executive-in-Council under subsection (3) that the bill shall be presented to LegCo in one of the official languages.

5. BL 74, section 4 of Cap. 5, sections 2 and 3¹ of Cap. 69, as well as Rules 50 (Form of Bills), 51 (Notice of Presentation of Bills) and 52 (Presentation and Publication of Bills) of the Rules of Procedure ("RoP"), which are relevant to the presentation of bills by Members, are reproduced in **Appendix I**.

¹ Section 3 of Cap. 69 provides that the promoters of a private bill shall pay to the Director of Accounting Services, within 21 days after the receipt by the Clerk to LegCo of the notice of intention to present the bill, the fee specified in the Schedule to the Ordinance and that the promoters may apply to the Chief Secretary for Administration to waive such fee in whole or in part on certain grounds specified therein. The current fee specified for a bill to amend an existing Ordinance is \$33,500 and that a bill for a principal Ordinance (whether or not the bill also amends an existing Ordinance) is \$67,000.

Procedure for presentation of bills by Members

6. The procedure for presentation of bills by Members pursuant to the relevant legal provisions, RoP and the established practice is outlined below:

- (a) make the draft bill available in both official languages (*section 4 of Cap. 5 and Rule 50(4) of RoP*);
- (b) consult the relevant LegCo Panel on the legislative proposal or the draft bill (*established practice*);
- (c) obtain a certificate issued by the Law Draftsman (*Rule 51(1) and (2) of RoP*);
- (d) seek² the President's opinion in writing on whether the bill relates to any of the following matters:
 - (i) public expenditure,
 - (ii) political structure,
 - (iii) the operation of the Government, or
 - (iv) Government policies;

(BL 74 and Rule 51(3) and (4) of RoP)

- (e) if the President is of the opinion that:
 - (i) the bill relates to (d)(i) or (ii) or (iii), the Member may not introduce the bill;
 - (ii) the bill relates to (d)(iv) only, proceed to (f); or
 - (iii) the bill does not relate to any of the matters in (d), proceed to (g) if the bill is a private bill; or proceed to (h) if the bill is not a private bill as defined (to be referred to as a public bill below);
- (f) seek the written consent of the Chief Executive ("CE") in respect of the bill (*BL 74 and Rule 51(4) of RoP*),
 - (i) if CE's written consent is not given, the Member may not introduce the bill; or

² By established practice, the Member may seek the President's opinion prior to the giving of notice of the intention to present a bill. The Member should provide the President with a copy of the bill, an explanatory memorandum and the Law Draftsman's certificate. The President's past rulings on bills intended to be presented by Members may be found on the LegCo web site (http://www.legco.gov.hk/general/english/presdet/pre_rul.htm).

- (ii) if CE's written consent is given, proceed to (g) if the bill is a private bill; or proceed to (h) if the bill is a public bill;
- (g) arrange for the bill to be published in two successive publications of the Gazette and the notice of the bill to be given by two advertisements in each of two daily newspapers published in Hong Kong, one being a Chinese language newspaper and another being an English language newspaper (*Rule 51(6) of RoP*);
- (h) give notice to the Clerk to LegCo of the intention to present the bill to the Council (*Rule 51(1) of RoP*). The notice shall be accompanied by:
 - (i) a copy of the bill,
 - (ii) an explanatory memorandum,
 - (iii) the Law Draftsman's certificate,
 - (iv) (if the bill is a private bill) a certificate signed by the Member stating that the gazettal and advertisement requirements in (g) have been fulfilled,
 - (v) (if (e)(ii) is applicable) CE's written consent in respect of the bill, and
 - (vi) (if the bill is to be presented in only one official language) a certificate stating that the Chief Executive-in-Council has directed under section 4(3) of Cap. 5 that the bill should be presented to LegCo in that language (*Rule 51(5) of RoP*).

7. While gazettal of a private bill is to be arranged by the Member presenting it in accordance with in paragraph 6(g) above, gazettal of a public bill is to be arranged by the Clerk to LegCo upon receipt of the bill for presentation to the Council. To allow the Clerk sufficient time to arrange for gazettal of a public bill, the Member presenting such a bill is advised to give notice preferably not less than **12 clear days** before the day of the Council meeting at which the bill is to be first read.

8. After the Clerk has caused a copy of the bill and its explanatory memorandum to be sent to every Member, the bill shall be deemed to have been presented to the Council (*Rule 52(2) of RoP*).

9. A flow chart on presentation of bills by Members is in **Appendix II** for Members' reference.

Legislative Council Secretariat
15 January 2013

**Relevant legal provisions and
rules in the Rules of Procedure of the Legislative Council
on the presentation of bills by Members of the Legislative Council**

Basic Law

Article 74:

"Members of the Legislative Council of the Hong Kong Special Administrative Region may introduce bills in accordance with the provisions of this Law and legal procedures. Bills which do not relate to public expenditure or political structure or the operation of the government may be introduced individually or jointly by members of the Council. The written consent of the Chief Executive shall be required before bills relating to government policies are introduced."

Laws of Hong Kong

Official Languages Ordinance (Cap. 5)

Section 4:

"(1) All Ordinances shall be enacted and published in both official languages.

(2) Nothing in subsection (1) shall require an Ordinance to be enacted and published in both official languages where that Ordinance amends another Ordinance and-

(a) that other Ordinance was enacted in the English language only; and

(b) no authentic text of that Ordinance has been published in the Chinese language under section 4B(1).

(3) Nothing in subsection (1) shall require an Ordinance to be enacted and published in both official languages where the Chief Executive in Council - (Amended 26 of 1999 s. 3)

(a) is of the opinion that a Bill is urgent and its enactment as an Ordinance in both official languages will occasion unreasonable delay; and

(b) directs that the Bill shall be presented to the Legislative Council in one of the official languages.

(4) Nothing in this section shall be construed as restricting the use of Chinese words in the English text of an Ordinance or of English words in the Chinese text of an Ordinance.

(5) This section shall not extend to subsidiary legislation."

Private Bills Ordinance (Cap. 69)

Section 2:

"In this Ordinance, unless the context otherwise requires -
"official languages" (法定語文) means official languages within the meaning of section 3 of the Official Languages Ordinance (Cap 5);

"private bill" (私人條例草案) means a bill which-

- (a) provides primarily for the particular interest or benefit of any individual, association or body corporate rather than the interest or benefit of the public; and
- (b) is not a Government measure."

Section 3:

"(1) Subject to subsection (2), the promoters of a private bill shall pay to the Director of Accounting Services, within 21 days after the receipt by the Clerk to the Legislative Council of notice of intention to present the bill, whichever of the fees specified in the Schedule as is appropriate.

(2) Where an application is made to the Chief Secretary for Administration by the promoters of a bill to waive any fee payable under subsection (1) in relation to the bill, he may waive such fee in whole or part if he is satisfied that the bill- (Amended L.N. 362 of 1997)

- (a) is for a charitable purpose within the meaning of section 2 of the Registered Trustees Incorporation Ordinance (Cap 306);
or
- (b) facilitates a Government measure.

(3) The Legislative Council may by resolution amend the Schedule.

(4) Any fee payable under subsection (1) shall be a debt due to the Government and recoverable as a civil debt."

Rules of Procedure of the Legislative Council

Rule 50 (Form of Bills):

"(1) A bill for presentation to the Council shall conform with the requirements laid down in this Rule.

(2) The bill shall be given a short title corresponding with the title by which it is to be cited if it becomes law, and that short title shall remain unchanged throughout the passage of the bill.

(3) The bill shall be given a long title setting out the purposes of the bill in general terms.

(4) Subject to a direction given under section 4(3) of the Official Languages Ordinance (Cap. 5) by the Chief Executive in Council, bills shall be presented in the Chinese and English languages.

(5) The clauses of the bill shall be preceded by the enacting formula.

(6) The bill shall be divided into clauses numbered consecutively and having a descriptive section heading above each clause.

(7) An explanatory memorandum stating the contents and objects of the bill in non-technical language shall be attached to the bill.

(8) In the case of a bill which is a "private bill" as defined in the Private Bills Ordinance (Cap. 69), there shall be included in the bill the following clause:

"Saving

Nothing in this Ordinance shall affect or be deemed to affect the rights of the Central Authorities or the Government of the Hong Kong Special Administrative Region under the Basic Law and other laws, or the rights of any body politic or corporate or of any other person except such as are mentioned in this Ordinance and those claiming by, from or under them." . "

Rule 51 (Notice of Presentation of Bills):

"(1) A Member or a designated public officer may at any time give notice of his intention to present a bill; such notice shall be sent to the office of the Clerk and shall be accompanied by a copy of the bill and memorandum required by Rule 50 (Form of Bills), and in the case of a Member, also by a certificate signed by the Law Draftsman pursuant to subrule (2).

(2) In the case of a bill to be presented by a Member, the Law Draftsman, if satisfied that the bill conforms to the requirements of Rule 50 (Form of Bills) and the general form of Hong Kong legislation, shall issue a

certificate to that effect.

(3) Members may not either individually or jointly introduce a bill which, in the opinion of the President, relates to public expenditure or political structure or the operation of the Government.

(4) In the case of a bill which, in the opinion of the President, relates to Government policies, the notice shall be accompanied by the written consent of the Chief Executive in respect of the bill. (*L.N. 107 of 1999*)

(5) In the case of a bill presented in one official language in pursuance of a direction under section 4(3) of the Official Languages Ordinance (Cap. 5), the notice shall be accompanied by a certificate stating that the Chief Executive in Council has directed that the bill should be presented in the Chinese language or, as the case may be, the English language.

(6) In the case of a bill presented by a Member such as is referred to in Rule 50(8) (Form of Bills), the notice shall be accompanied by a certificate signed by the Member, stating that the bill has been published in two successive publications of the Gazette and that notice of the bill has been given by two advertisements in each of two daily newspapers published in Hong Kong, one being a Chinese language newspaper and another being an English language newspaper. (*L.N. 176 of 2001*)

(7) (a) Except as otherwise provided in subrule (7A) and Rule 66 (Bills Returned for Reconsideration), a bill which, in the opinion of the President, contains substantially the same provisions as another bill on which the Council has already taken a decision at second reading shall not be further proceeded with in the same session and shall be withdrawn. (*L.N. 228 of 2000*)

(b) If a bill which has been read for the second time is subsequently withdrawn another bill with substantially the same provisions may be presented in the same session, subject to the provisions of Rule 50 (Form of Bills), this Rule and Rule 52 (Presentation and Publication of Bills).

(7A) Where the motion for the second or third reading of an Appropriation Bill is negatived, another Appropriation Bill containing the same or substantially the same provisions may be presented within the same session. (*L.N. 228 of 2000*)

(8) A Member presenting a bill shall be known throughout the subsequent proceedings on the bill as the Member in charge of the bill. In the case of a bill introduced jointly by more than one Member, these Members shall designate among themselves a Member as the Member in charge of the

bill at the time of presenting the bill and the Member so designated shall signify himself as such in the notice for presentation.

(9) A public officer presenting a bill shall be known throughout the subsequent proceedings on the bill as the public officer in charge of the bill; and references in these Rules of Procedure to a Member in charge of a bill include a public officer in charge of a bill."

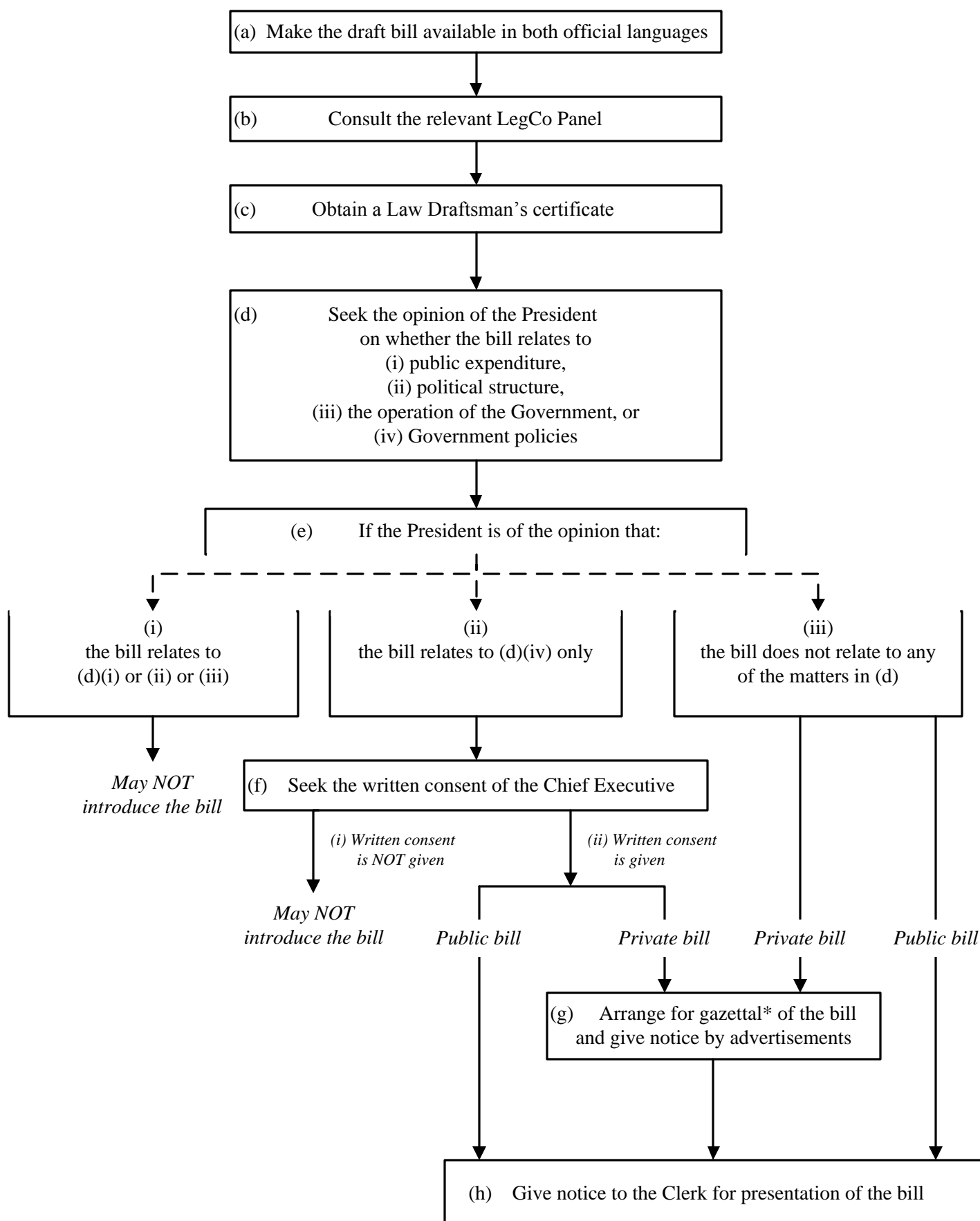
Rule 52 (Presentation and Publication of Bills):

"(1) The Clerk shall, after receipt of a bill for presentation to the Council, cause the text of the bill and its explanatory memorandum to be published in the Gazette unless –

- (a) the President directs that the bill shall not be published in the Gazette before it has been read the first time; or
- (b) the bill has already been published in the Gazette in accordance with Rule 51(6) (Notice of Presentation of Bills).

(2) The Clerk shall, after receipt of a bill for presentation to the Council, cause a copy of the bill and its explanatory memorandum to be sent to every Member, whereupon the bill shall be deemed to have been presented to the Council."

Procedure for presentation of bills by Members



* Gazettal of a public bill is to be arranged by the Clerk after receipt of the bill for presentation to the Council