CHAPTER 3

Scrutiny of Legislation

Since the return of sovereignty to China, Legco members’ initiation power has received much more extensive restrictions under the Basic Law than under any colonial instruments. Further, the passage of member’s bill and amendment is subject to a Separate Voting Mechanism (SVM) under Annex II of the Basic Law. The high success rate of government bills in Legco in the past may also impress people with a silent and weak legislature. However, Legco’s actual impact on legislation depends on not only the constitutional power, but also various institutional factors, including the effectiveness of the committee work and interaction amongst political groups within Legco. To assess the legislative influence on public policy, many scholars develop the traditional notion of the law-making function of legislatures and provide broader perspectives for such assessment, including devising indicators for legislative ‘viscosity’, \(^{1}\) conducting an issue-oriented examination of legislative activities, \(^{2}\) and dividing distinct policymaking stages. \(^{3}\)

Using these measurement tools, this chapter examines the major aspects of Legco’s law-making power, including private member’s bills, Bills Committees’ deliberation, members’ Committee Stage Amendments (CSA) to government bills and subsidiary legislation, and illustrates ways in which legislators push the government into improving its drafts and changing public policy.

Private Member’s Bill under Article 74 of Basic Law

Hong Kong has followed the practice of introducing private member’s bills as the former British colony. In the British Parliament, private member’s bills refer to public bills introduced by members other than members of the government. \(^4\)

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1 The concept of ‘viscosity’ was suggested by Blondel to qualify legislative influence. Ma Ngok devised five ‘viscosity indicators’ for Hong Kong Legco: 1. the number of bill committees formed; 2. time spent on bill deliberation; 3. the number of government amendments; 4. the number of member’ amendments; and 5. the number of members’ amendments passed. See Ma, *Political Development in Hong Kong: State, Political Society, and Civil Society*, 122–123.
2 Ibid.
Legco members in the colonial period were not allowed to introduce a bill having ‘an effect which would charge or dispose of the revenue of the Hong Kong government’, without the express permission of the Governor.\(^5\) After 1997, legislators can no longer propose bills relating to political structure, public expenditure or operation of the government. Moreover, member’s bills relating to government policies shall require the written consent of the CE, according to Article 74 of the Basic Law. These restrictions were incorporated into Legco’s Rules of Procedure (RoP) through Rules 51(3) and (4).\(^6\) The President of Legco shall determine whether a member’s bill falls within the scope of Article 74:

**Rule 51(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.

**Rule 51(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.

Any bill proposed by members is subject to restrictions of Rules 51(3) and (4) before its first reading. The President of Legco shall disallow the introduction of such a bill if it falls into the scope of Rule 51(3) or require the CE’s written consent in the case that a bill relates to ‘government policy’ under Rule 51(4).

**Decline of Private Member’s Bills**

As Table 3.1 shows, Legco members introduced 25 public bills and 19 private bills from 1998 to 2013.\(^7\) All private bills were passed whilst only seven private member’s bills were enacted. Of 25 private member’s bills, six were disallowed by the President in accordance with Rule 51(3) and ten relating to government policy were not tabled without the written consent of the CE. Of the remaining nine bills, two lapsed owing to the end of the Legco session. Therefore, only seven private member’s bills were tabled before and eventually passed by Legco, including five bills concerning the composition of University Councils and two concerning the regulation of professional accountants. These successful bills do not have an effect on the public at large.

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\(^7\) The author’s calculation based on Legco’s official website: <http://www.legco.gov.hk>.