

**Administration's Responses to Points raised on 24 April 2001
by Members of the Bills Committee
on the Chief Executive Election Bill**

(for submission to the Bills Committee meeting to be held on 2 May 2001)

Polling date

Q1: On what basis does the Administration propose that the polling day be at least 90 days before the date when the office of the serving CE becomes vacant?

A1: The proposal of holding the election at least 90 days before the vacancy arises is made having regard to the time that is reasonably required for settling election petition and/or judicial review (if any), for the Central People's Government to make appointment and for putting in place necessary transitional arrangements.

The necessity for a 90-day period can best be illustrated by examining the time that will be required in the event of a judicial review. If a judicial review is applied for, we need to allow –

- (a) 30 days for an application for leave to apply for judicial review to be submitted to the Court of First Instance (CFI), assuming that the CFI does not extend the deadline upon request. (clause 40 of the CE Election Bill);
- (b) sufficient time for the CFI to consider the leave application and, if leave is granted, to hear the case and hand down ruling;
- (c) seven working days for an application for leave to appeal to be submitted to the Court of Final Appeal (CFA) under the "direct" appeal procedure (clause 35(2) of the CE Election Bill);
- (d) seven days for the appellant to serve notice of application;

- (e) sufficient time for the CFA to consider the leave application;
- (f) seven days for filing a Notice of Appeal if leave to appeal is granted;
- (g) 14 days for the respondent to give notice of intention to defend;
- (h) sufficient time for the parties to handle interlocutory matters such as filing cases, preparing and inspecting records and filing lists of authorities;
- (i) sufficient time for the CFA to hear the case and hand down judgment.

The above paragraph demonstrates that the process for settling all legal challenges to the CE election might take more than two months. The Judiciary has indicated that they will deal with legal challenges arising from the CE election as a matter of urgency. Also, we have to allow time for the CPG to make appointment and for putting in place necessary transitional arrangements. There is, hence, a practical need to hold the election at least 90 days before as we have proposed.

Q2: Paragraph 2 of BL 53 provides that “in the event that the office of Chief Executive becomes vacant, a new Chief Executive shall be selected within six months in accordance with the provisions of Article 45 of this Law”. Does this six-month period apply only to the CE election or to both election and appointment by the Central People’s Government?

A2: Paragraph 2 of BL 53 needs to be read along with Article 45 and Annex I of the Basic Law (BL). The term “selected” as used in BL 53(2) refers to “elected” in accordance with BL 45 and Annex I. The effect of BL 53(2) is that the election process must be completed within six months. The timing of the appointment that follows upon an election is not subject to that requirement.

Q3: Please set out the Administration’s time schedule to submit the request for appointment by the Central People’s Government to fill the vacancy in the office of CE.

A3: We will forward the election result to the Central People’s Government for its consideration to appoint the successful candidate as CE as soon as practicable.

Q4: What is the procedure for appointment of CE by the Central People’s Government?

A4: This is a matter falling within the prerogative of the Central People’s Government.

Q5: Please set out the time schedule to accommodate the election petition(s) and judicial review(s) so as to ensure all the legal proceedings to challenge the result of the CE election could be settled within a period of six months from the date when the vacancy of the office of CE has arisen.

A5: The time schedule for judicial review is set out in A1 above. As for election petitions, clause 35 of the CE Election Bill provides that all election petitions must be lodged within seven working days after the declaration of election result and an application for leave to appeal to the Court of Final Appeal must be filed within seven working days after the day on which the Court of First Instance hands down judgment.

As for how the “six-month” requirement of BL 53 should be interpreted, please refer to A2.

Overlapping membership in EC

Q6: In view of the requirement in Annex I of the Basic Law that the EC shall be composed of 800 members, a member is of the view that the Administration should also make proposal to deal with the situation of overlapping membership arising from a person concurrently being a LegCo Member and a Hong Kong deputy to NPC.

A6: According to Annex I of the Basic Law, a person is a member of the Election Committee (EC) if he holds office as a Member of the LegCo or a Hong Kong Deputy to the NPC. The intention of the Basic Law is clear that both LegCo Members and Hong Kong Deputies to the NPC should, by virtue of the office they hold, assume ex-officio membership of the EC. It then follows that when an ex-officio member ceases to hold the qualifying office, his EC membership should cease, and that his seat should be taken over by the person newly elected to the relevant office. To give effect to this ex-officio requirement, the Electoral Registration Officer is empowered to amend the EC register to incorporate any changes in the ex-officio membership.

We have considered the issue of overlapping membership between LegCo and the NPC offices in the context of the 2000 LegCo elections. We have decided not to transfer the overlapping seats to other subsectors, since to do so would run the risk of not having sufficient seats to accommodate newly elected LegCo Members and Hong Kong Deputies to the NPC should the extent of overlapping membership be reduced in future. We consider that we need to comply with the requirements for ex-officio membership as provided for in Annex I of the Basic Law, and what we have proposed in the Chief Executive Election Bill reflects this.

Though an EC member's name might appear twice in the list of EC membership, he or she is entitled to only one vote at the election, as stipulated in clause 24(3) of the CE Election Bill.