

Chief Executive Election Bill

**Power of the Central People's Government under the Basic Law to
revoke the appointment of the Chief Executive**

The Law Society of Hong Kong has the following observations on the Chief Executive Election Bill:

A. Whether Central People's Government ("CPG") has the power to remove the Chief Executive ("CE") from office and the legal basis of such power

1. Mainland Laws:

One proposition which could be derived from the constitutional statutes of the People's Republic of China (PRC) is that one who appoints an official has the power to remove him.¹ It is reasonable to believe that the National People's Congress, in enacting the BL, would not have intended to deviate from this principle. It is noted that the Macao Special Administrative Region BL, which also provides for a high degree of autonomy, expressly recognises the power of the CPG to remove the CE (Art. 15).

2. BL

The language of the BL suggests that vacancy of the CE's office leads to the termination of the CPG's appointment, therefore this issue would appear not to be a matter which is exclusively under the SAR's autonomy.

3. The Law Society is of the opinion that there are two instances where the CPG would be involved when the CE's office becomes vacant:

(a) Resignation of the CE

The CE's resignation results in the termination of the appointment by the CPG pursuant to BL 45, which states that the CE is appointed by the CPG. The Mainland's domestic practice indicates that the CE's resignation should be accepted by the CPG before the CE's office becomes vacant officially.

(b) Impeachment of the CE by the Legislative Council

¹ See PRC Constitution, Arts. 63, 65(3), 67(11-13), 80, 101 and 103(2); Organic Law of the National People's Congress, Arts. 27(2), 28(2) and 36(2); Organic Law of the Local People's Congress and Local People's Government at Various Levels, Art. 44(9-11); Organic Law of the People's Court, Arts. 11(2), 35 and 37(1); Organic Law of the People's Procuratorate, Arts. 21-24 and 27(2); HKSAR Basic Law, Arts. 48(5-7), 55(1) and 73(7); Macao SAR Basic Law, Arts. 15, 50(6, 8-11) and 57(1).

The language of BL 73(9) clearly states the CPG's involvement as the 'final step' in removal of the CE by the impeachment process in BL 73(9). It is therefore clear that the CPG has the power to remove the CE from office.

B. Whether the power of removal is subject to constraints

We agree with the Administration that the CPG's exercise of the power to remove the CE in BL 73(9) is subject to constitutional, legal and conventional constraints. We are of the opinion that the high degree of autonomy of the SAR under BL 2 and 12, as well as the CE's accountability to the CPG and the SAR under BL 43, must be fully complied with when CPG exercises its power to remove the CE.

C. Comments on the proposed amendment by the Administration

(1) We have reviewed the amendments made by both the Administration and by the Hon. Audrey EU, and suggest Clause 4 be amended as follows:

4. Vacancy in office

The office of the Chief Executive becomes vacant –

(a) on the expiry of the term of the Chief Executive;

(b) if the Chief Executive dies;

(c) if the Chief Executive resigns;

(d) if the Central People's Government removes the Chief Executive from office upon the reporting to it for decision of a motion of impeachment passed against him under Article 73(9) of the Basic Law;

(e) if the Chief Executive loses the ability to discharge his duties as a result of serious illness or otherwise, other than being unable to discharge his duties for a short period;

(f) in circumstances other than any of the circumstances specified in sub-clauses (a), (b), (c), (d) or (e) of this clause.

(2) The changes to 4(c) and 4(d) have been discussed in A3(a) and A3(b) above, respectively.

(3) Proposal 4(e) incorporates the provisions in BL 52(1) and 53(1). It takes into account *other circumstances* not covered by sub-paragraphs 4(a) to (d), such as inability of the CE to resign or the whereabouts of CE unknown.

D. Other views

(1) "Dereliction of duty" under BL 73(9)

The two scenarios cited by the Administration, impairment of CE to resign or whereabouts of CE unknown, should not come under BL 73(9). The plain meaning of the term "dereliction of duty" (*duzhi*), in legal Chinese, refers to a wrongful act attracting administrative or criminal penalty.² It would be hard to accept, for example, that if the CE is kidnapped, he should be impeached under BL 73(9).

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² See PRC Criminal Law, ch. 9; Administrative Review Law, Art. 35; Pharmaceuticals Administration Law, Art. 97(2).