

**Administration's Responses to Points raised
on 19 June 2001 by Members of the Bills Committee
on the Chief Executive Election Bill**

(for submission to the Bills Committee meeting to be held on 26 June 2001)

Clause 4

Q1: The Administration is requested to explain –

- (a) the Basic Law provisions and the circumstances under which CPG could remove CE from office; and**
- (b) Mr James O'Neil's advice at the meeting that CPG could remove CE from office under BL 2, 12, 15, 43, 45, 47, in addition to 52 and 73(9).**

A1: The Administration has previously submitted papers to the committee (*CB(2)1518/00-01(01)*, *CB(2)1647/00-01(01)* and *CB(2)1782/00-01(01)*) which explained the legal basis for the power of the CPG to remove a CE from office.

CPG's power to remove the CE flows from the Basic Law. In the interpretation of the Basic Law a purposive approach is to be applied (*Ng Ka ling (an infant) & Anor v Director of Immigration*). Under BL 2, the HKSAR is authorised to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power. BL 12 provides that the HKSAR shall enjoy a high degree of autonomy and come directly under the CPG.

At issue is the interpretation of "*appointed by the Central People's Government*" in BL 45. It should be read in conjunction with BL 15 –

"The Central People's government shall appoint the Chief Executive and the principal officials of the executive authorities of the Hong Kong Special Administrative Region in accordance with the provisions of Chapter IV of this Law."

Article 15 refers to appointment, but not removal. However, Article 48(5) confers upon the Chief Executive the power and function to nominate and report for appointment of the principal officials and to recommend the removal of them. It follows that “appoint” in Article 15 contains the power to remove. This view is also supported by the impeachment mechanism created by BL 73(9). According to BL 52, the CE must resign under the specified circumstances. If the CE refuses to resign, the ultimate enforcement will be through the impeachment procedure under BL 73(9). When a motion of impeachment is passed, the Legislative Council may “report it to the Central People’s Government” for decision. This necessarily implies that the CPG may remove the Chief Executive. The CPG will have a positive decision to make as to whether the CE should remain in office or be removed.

The power to remove is not limited to situations which fall within BL 52 or BL 73(9). The appointment of the CE as the head of the SAR by the CPG is in line with the principle that the CE shall be accountable to the CPG under BL 43 and is a manifestation of sovereignty. The decision to appoint or not to appoint is a substantive one. The power to remove is not an unqualified one but is commensurate with the power to appoint and may be subject to various constraints such as constitutional, legal and conventional. The Basic Law is a national law which applies to the CPG and the power which is derived from the Basic Law must be exercised taking account of its provisions.

There is no single Article of the Basic Law containing an express empowering provision. The power arises by necessary implication from a number of articles. It was in that context that advice was given that BL 2, 12, 15, 43 and 47, in addition to BL 52 and 73(9), were relevant to the power of the CPG to remove a CE.

The Administration’s views are shared by the LegCo Legal Adviser. In his written opinion on this matter (*LS102/00-01 attached to CB(2)1698/00-01*), he concludes that –

“According to the basic principles of “one country, two systems” and “high degree of autonomy” of the HKSAR, and on the premise that the CPG should only exercise its power not to appoint sparingly and rationally, it appears that the CPG will have the implied power to revoke the appointment of the CE in limited circumstances which include circumstances specified in BL 52 and BL 73(9), and circumstances which do not fall within the ambit of BL 52 and BL 73(9) but revocation is necessary for purpose which do not contravene the BL, including the purpose of maintaining “Hong Kong’s stability and administrative efficiency”. ”

In its written submission to the Bills Committee (CB(2)1786/00-01(02)), the Law Society of Hong Kong also concurs with the Administration’s views and makes the following observations –

- (a) *“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. It is reasonable to believe that the National People’s Congress, in enacting the BL, could 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)”*; and
- (b) *“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.”*

In the paper CB(2)1647/00-01(01), the Administration gave a number of examples of situations where the question of removal of a CE might arise which do not fall within the scope of BL 52 and BL 73(9). For example a CE was physically or mentally incapable of carrying out the duties of his office but where the very impairment that prevented him from carrying them out rendered him incapable of resigning. Or where the whereabouts of a CE could not be ascertained.

While the proposed clause 4(c)(i) to (iv) cover the examples given by the Administration, there are other circumstances that do not fall within their scope.

For instance, the LegCo Legal Adviser gave the example of the situation where a CE who had committed a serious breach of law outside Hong Kong or committed a moral wrong which brings outcry from the community might be considered to be not suitable to be the head of the HKSAR and represent the Region. He opined that in such a case the CE could be removed from office by the CPG for being unsuitable to be the head of the HKSAR and represent the Region (BL 43 paragraph 1) or not being a person of integrity (BL 47).

It is not possible to predict every combination of circumstances that might arise in the future. The legislation should be capable of working no matter what happens so that an election to return a new CE can be triggered. In light of this, we have proposed a catch-all provision (clause 4(c)(v)).

Constitutional Affairs Bureau
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