

立法會

Legislative Council

LC Paper No. LS 102/00-01

Chief Executive Election Bill

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

The Problem

Article 15 of the Basic Law ("BL") provides that the Central People's Government ("CPG") shall appoint the Chief Executive ("CE") in accordance with the provisions of Chapter IV of the BL. BL45 paragraph 1 provides that the CE shall be selected by election or through consultations held locally and be appointed by the CPG. There is however no express provision of the BL for the CPG to revoke the appointment of the CE. The problem is whether the CPG has power to revoke the appointment of the CE; and if so, the extent of such power.

Purposes of the paper

2. To—
 - (a) examine whether the CPG has power to revoke the appointment of the CE; and
 - (b) if the CPG has power to revoke the appointment of the CE, examine the extent of such power.

Appointment and Removal of Persons from Constitutional Office or Administrative Office in the PRC

3. Article 62(4), (6), (7) and (8) of the PRC Constitution ("the Constitution") (**Annex I**) provides that the National People's Congress ("NPC") has

power to elect persons to constitutional office, for example the President and the Vice-President of the PRC. Article 63(1), (3), (4) and (5) of the Constitution (**Annex II**) provides that the NPC has power to remove them from office. Article 62(5) of the Constitution provides that the NPC has power to decide on the choice of the Premier and the Vice-Premiers of the State Council, etc. upon nomination. Article 63(2) of the Constitution provides that the NPC has power to remove them from office. Article 89(17) of the Constitution (**Annex III**) provides that the State Council has power to appoint and remove officers. It appears that under the Constitution the power to appoint a person to an office co-exists with the power to remove him from office.

4. Can we draw an analogy from the above that the power of appointment of the CE co-exists with the power of removal of him from office? It is doubtful for the following reasons. First, the CE is elected and to be appointed by the CPG. According to Article 85 of the Constitution, the State Council is CPG. In the context of the Constitution, Article 62 concerns election of persons to constitutional office by the NPC. However, the CE is not elected by the LegCo (a rough analogy with the NPC) but by an Election Committee. Article 89(17) concerns the appointment by the State Council, i.e. the CPG of officers but there is no need for election of the officers concerned. Although the CE is appointed by the CPG, the CE is elected by an Election Committee. Secondly, under the Constitution, the power to appoint or select officials and the power to remove them from office are stipulated separately in different provisions. The power of removal is not implied but expressly provided for. For example, the NPC's power to decide on the choice of the Premier of the State Council is under Article 62(5) of the Constitution; whereas the NPC's power to remove the Premier from office is under Article 63(2) of the Constitution. Thirdly, the power to appoint and remove persons from office is clearly stipulated in the relevant provisions of the BL. For example, the CE has the power to nominate and to report to the CPG for appointment of the principal officials of the HKSAR and to recommend to the CPG the removal of those officials (BL48(5)). Take another example, the CE has power to appoint or remove judges of the courts at all levels in accordance with legal procedures (BL48(6)) (**Annex IV**).

5. The conclusion is that despite the power to appoint officials co-exists with the power to remove them from office under the Constitution, similar analogy may not be drawn in interpreting the BL.

Interpretation of the BL

6. A purposive approach to the interpretation of the BL is appropriate. In Ng Ka Ling (an infant) & Anor v Director of Immigration [1999]1HKC 291, Li CJ said at p.325 that "[t]he Basic Law is an entrenched constitutional instrument to implement the unique principle of 'one country, two systems'. As is usual for constitutional instruments, it uses ample and general language. It is a living instrument intended to meet changing needs and circumstances.". Li CJ further said at p.325 that "[i]t is generally accepted that in the interpretation of a constitution such as the Basic Law a purposive approach is to be applied. The adoption of a purposive approach is necessary because a constitution states general principles and expresses purposes without condescending to particularity and definition of terms. Gaps and ambiguities are bound to arise and, in resolving them, the courts are bound to give effect to the principles and purposes declared in, and to be ascertained from, the constitution and relevant extrinsic materials. So, in ascertaining the true meaning of the instrument, the courts must consider the purpose of the instrument and its relevant provisions as well as the language of its text in the light of the context, context being of particular importance in the interpretation of a constitutional instrument.". Li CJ further said at p.326 that "[a]s to the language of its text, the courts must avoid a literal, technical, narrow or rigid approach. They must consider the context. The context of a particular provision is to be found in the Basic Law itself as well as relevant extrinsic materials including the Joint Declaration. Assistance can also be gained from any traditions and usages that may have given meaning to the language used."

Purposes of BL52 and BL73(9)

7. BL52 provides for the circumstances in which the CE must resign from his office (**Annex V**). When the CE loses the ability to discharge his duties as a result of serious illness or other reasons, he must resign. After the LegCo is dissolved because the CE twice refuses to sign a bill passed by it, the new LegCo again passes by a two-thirds majority the original bill in dispute, but he refuses to sign it. The CE must resign. After the LegCo is dissolved because it refuses to pass a budget or any other important bill, the new LegCo still refuses to pass the original bill in dispute, the CE must resign. However, no where in the BL states the consequence if the CE does not resign.

8. BL73(9) provides that the LegCo may pass a motion of impeachment against the CE who refuses to resign having committed a serious breach of law or been derelict of duty and upon the findings by an investigation committee that there is evidence to substantiate those charges. The LegCo may then report the motion to the CPG for decision. (**Annex VI**). However, the BL does not stipulate the decision that the CPG may take on the motion.

9. JI Pengfai, Chairman of the Drafting Committee for the Basic Law of the HKSAR, in his speech to the Third Session of the Seventh NPC on 28 March 1990, said that "[t]o maintain Hong Kong's stability and administrative efficiency, the Chief Executive must have real power which, at the same time, should be subject to some restrictions" (**Annex VII**). Mr. JI then went on to describe those power and restrictions which are in the context of the BL. Among the restrictions are circumstances specified in BL52 and BL73(9). In applying the purposive approach, the purpose of BL52 and BL73(9) is to specify circumstances in which the CE must resign or should have resigned otherwise the balance between his power and restrictions will be upset. The upset of the balance may lead to impairment of "Hong Kong's stability and administrative efficiency". It appears that when reading together BL52 and BL73(9) on the one hand, and BL15 and BL45 paragraph 1 on the other hand, there is an implied power for the CPG to revoke the appointment of the CE if he fails to resign under BL52 or does not resign having committed a serious breach of law or been derelict of duty.

10. Therefore it appears that the purpose of BL52 would not be accomplished unless there is an implied power for CPG to revoke the appointment of the CE in case he refuses to resign. It also appears that the purpose of BL73(9) would not be accomplished unless the "decision" of the CPG includes a power to revoke the appointment of the CE.

Purposes of BL15 and BL45 paragraph 1

11. The apparent purpose of BL15 and BL45 paragraph 1 is for the CPG to appoint the CE. The analysis from paragraphs 7 to 10 shows that the CPG's power to appoint the CE is implied with the power to revoke his appointment in the circumstances specified in BL52 and BL73(9). Are there any other circumstances in which the CPG may have power to revoke the appointment of the CE?

12. The appointment of the CE, as opined by some members (who were members of the Drafting Committee for the Basic Law) of the Bills Committee on the CE Election Bill and WANG Shuwen's book on "Introduction to the Basic Law of HKSAR", (English edition 2000), at p.365 (**Annex VIII**), is not in form but in substance. By that it means the CPG may not automatically appoint a CE-elect and that the CPG may exercise its discretion to appoint or not to appoint. The BL does not stipulate the circumstances in which such discretion may be exercised by the CPG. Under the basic principles of "one country, two systems" and the "high degree of autonomy" of the HKSAR (as described in the preamble to BL, BL2 and paragraph 3 of the Sino-British Joint Declaration), it appears that the CPG should only exercise its discretion not to appoint the CE-elect sparingly and rationally. The argument that there is an implied power for the CPG to revoke the appointment of the CE in the circumstances specified in BL52 and BL73(9) further reinforces the proposition that the appointment of the CE is in substance so that it carries the power to revoke. Is the power to revoke unlimited? In XIAO Yuyun's book on "One Country, Two Systems and the Basic Law of the HKSAR" (1990 edition), Mr. XIAO says at p. 176 that according to the principle that the HKSAR being an inalienable part of the PRC and a local administrative region directly under the CPG, the CPG shall have the power to appoint the CE and revoke his appointment. Mr. XIAO goes on to say that the CPG's power to appoint CE and revoke his appointment is an important aspect of the relationship between the CPG and the HKSAR (**Annex IX**). However, Mr. XIAO does not say further whether the power to revoke is absolute and unlimited. Arguably, 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 BL52 and BL73(9), and circumstances which do not fall within the ambit of BL52 and BL73(9) but revocation is necessary for purposes which do not contravene the BL, including the purpose of maintaining "Hong Kong's stability and administrative efficiency". For example, a CE who has committed a serious breach of law outside Hong Kong or has committed a moral wrong which brings outcry from the community may be considered to be not suitable to be the head of the HKSAR and represent the Region. But arguably those circumstances may not fall within the ambit of BL52 or BL73(9) and hence could not trigger the CPG's power to revoke the appointment of the CE. In such case, it appears that the CPG shall have the implied power under BL15 and BL45 paragraph 1 to revoke the appointment of CE for being unsuitable to be the head of the HKSAR and represent the Region (BL43 paragraph 1) or not being a person of integrity (BL47 paragraph 1).

13. Therefore it appears that the purpose of BL15 and BL45 paragraph 1 is to empower the CPG to appoint the CE (express power) and revoke his appointment in circumstances specified in BL52 and BL73(9) and other circumstances for purposes which do not contravene the BL, including the purpose of maintaining "Hong Kong's stability and administrative efficiency" (implied power).

Conclusion

14. In adopting the purposive approach to the interpretation of the BL, it appears that there is an implied power for the CPG to revoke the appointment of the CE.

15. However, the power to revoke is not unlimited. The CPG may revoke the appointment if the CE fails to resign under BL52 or refuses to resign having committed a serious breach of law or been derelict of duty under BL73(9). In circumstances other than those specified in BL52 and 73(9), the CPG may revoke the appointment of the CE for purposes which do not contravene the BL, including the purpose of maintaining "Hong Kong's stability and administrative efficiency".

Encl

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gions and municipalities directly under the Central Government, and by the armed forces. All the minority nationalities are entitled to appropriate representation.

Election of deputies to the National People's Congress is conducted by the Standing Committee of the National People's Congress.

The number of deputies to the National People's Congress and the manner of their election are prescribed by law.

ARTICLE 60

The National People's Congress is elected for a term of five years.

Two months before the expiration of the term of office of a National People's Congress, its Standing Committee must ensure that the election of deputies to the succeeding National People's Congress is completed. Should exceptional circumstances prevent such an election, it may be postponed by decision of a majority vote of more than two-thirds of all those on the Standing Committee of the current National People's Congress, and the term of office of the current National People's Congress

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may be extended. The election of deputies to the succeeding National People's Congress must be completed within one year after the termination of such exceptional circumstances.

ARTICLE 61

The National People's Congress meets in session once a year and is convened by its Standing Committee. A session of the National People's Congress may be convened at any time the Standing Committee deems this necessary, or when more than one-fifth of the deputies to the National People's Congress so propose.

When the National People's Congress meets, it elects a presidium to conduct its session.

✓ ARTICLE 62

The National People's Congress exercises the following functions and powers:

- (1) to amend the Constitution;
- (2) to supervise the enforcement of the Constitution;

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(3) to enact and amend basic statutes concerning criminal offences, civil affairs, the state organs and other matters;

(4) to elect the President and the Vice-President of the People's Republic of China;

(5) to decide on the choice of the Premier of the State Council upon nomination by the President of the People's Republic of China, and to decide on the choice of the Vice-Premiers, State Councillors, Ministers in charge of ministries or commissions and the Auditor-General and the Secretary-General of the State Council upon nomination by the Premier;

(6) to elect the Chairman of the Central Military Commission and, upon nomination by the Chairman, to decide on the choice of all the others on the Central Military Commission;

(7) to elect the President of the Supreme People's Court;

(8) to elect the Procurator-General of the Supreme People's Procuratorate;

(9) to examine and approve the plan for national economic and social development and the report on its implementation;

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(10) to examine and approve the state budget and the report on its implementation;

(11) to alter or annul inappropriate decisions of the Standing Committee of the National People's Congress;

(12) to approve the establishment of provinces, autonomous regions, and municipalities directly under the Central Government;

(13) to decide on the establishment of special administrative regions and the systems to be instituted there;

(14) to decide on questions of war and peace; and

(15) to exercise such other functions and powers as the highest organ of state power should exercise.

ARTICLE 63

The National People's Congress has the power to recall or remove from office the following persons:

(1) the President and the Vice-President of the People's Republic of China;

(2) the Premier, Vice-Premiers, State Councillors, Ministers in charge of ministries or commissions and the Auditor-General and the Secretary-General of the State Council;

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(3) to enact and amend basic statutes concerning criminal offences, civil affairs, the state organs and other matters;

(4) to elect the President and the Vice-President of the People's Republic of China;

(5) to decide on the choice of the Premier of the State Council upon nomination by the President of the People's Republic of China, and to decide on the choice of the Vice-Premiers, State Councillors, Ministers in charge of ministries or commissions and the Auditor-General and the Secretary-General of the State Council upon nomination by the Premier;

(6) to elect the Chairman of the Central Military Commission and, upon nomination by the Chairman, to decide on the choice of all the others on the Central Military Commission;

(7) to elect the President of the Supreme People's Court;

(8) to elect the Procurator-General of the Supreme People's Procuratorate;

(9) to examine and approve the plan for national economic and social development and the report on its implementation;

(10) to examine and approve the state budget and the report on its implementation;

(11) to alter or annul inappropriate decisions of the Standing Committee of the National People's Congress;

(12) to approve the establishment of provinces, autonomous regions, and municipalities directly under the Central Government;

(13) to decide on the establishment of special administrative regions and the systems to be instituted there;

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(3) the Chairman of the Central Military Commission and others on the Commission;

(4) the President of the Supreme People's Court; and

(5) the Procurator-General of the Supreme People's Procuratorate.

ARTICLE 64

Amendments to the Constitution are to be proposed by the Standing Committee of the National People's Congress or by more than one-fifth of the deputies to the National People's Congress and adopted by a majority vote of more than two-thirds of all the deputies to the Congress.

Statutes and resolutions are adopted by a majority vote of more than one half of all the deputies to the National People's Congress.

ARTICLE 65

The Standing Committee of the National People's Congress is composed of the following:

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the Chairman;
the Vice-Chairmen;
the Secretary-General; and
members.

Minority nationalities are entitled to appropriate representation on the Standing Committee of the National People's Congress.

The National People's Congress elects, and has the power to recall, all those on its Standing Committee.

No one on the Standing Committee of the National People's Congress shall hold any post in any of the administrative, judicial or procuratorial organs of the state.

ARTICLE 66

The Standing Committee of the National People's Congress is elected for the same term as the National People's Congress; it exercises its functions and powers until a new Standing Committee is elected by the succeeding National People's Congress.

The Chairman and Vice-Chairmen of the Standing Committee shall serve no more than two consecutive terms.

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the State Councillors;
the Ministers in charge of ministries;
the Ministers in charge of commissions;
the Auditor-General; and
the Secretary-General.

The Premier has overall responsibility for the State Council. The ministers have overall responsibility for the ministries or commissions under their charge.

The organization of the State Council is prescribed by law.

ARTICLE 87

The term of office of the State Council is the same as that of the National People's Congress.

The Premier, Vice-Premiers and State Councillors shall serve no more than two consecutive terms.

ARTICLE 88

The Premier directs the work of the State Council. The Vice-Premiers and State Councillors assist in the work of the Premier.

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Executive meetings of the State Council are composed of the Premier, the Vice-Premiers, the State Councillors and the Secretary-General of the State Council.

The Premier convenes and presides over the executive meetings and plenary meetings of the State Council.

✓ ARTICLE 89

The State Council exercises the following functions and powers:

(1) to adopt administrative measures, enact administrative rules and regulations and issue decisions and orders in accordance with the Constitution and the statutes;

(2) to submit proposals to the National People's Congress or its Standing Committee;

(3) to lay down the tasks and responsibilities of the ministries and commissions of the State Council, to exercise unified leadership over the work of the ministries and commissions and to direct all other administrative work of a national character that does not fall within the jurisdiction of the ministries and commissions;

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(4) to exercise unified leadership over the work of local organs of state administration at different levels throughout the country, and to lay down the detailed division of functions and powers between the Central Government and the organs of state administration of provinces, autonomous regions and municipalities directly under the Central Government;

(5) to draw up and implement the plan for national economic and social development and the state budget;

(6) to direct and administer economic affairs and urban and rural development;

(7) to direct and administer affairs of education, science, culture, public health, physical culture and family planning;

(8) to direct and administer civil affairs, public security, judicial administration, supervision and other related matters;

(9) to conduct foreign affairs and conclude treaties and agreements with foreign states;

(10) to direct and administer the building of national defence;

(11) to direct and administer affairs concerning the nationalities, and to safeguard the equal

rights of minority nationalities and the right of autonomy of the national autonomous areas;

(12) to protect the legitimate rights and interests of Chinese nationals residing abroad and protect the lawful rights and interests of returned overseas Chinese and of the family members of Chinese nationals residing abroad;

(13) to alter or annul inappropriate orders, directives and regulations issued by the ministries or commissions;

(14) to alter or annul inappropriate decisions and orders issued by local organs of state administration at different levels;

(15) to approve the geographic division of provinces, autonomous regions and municipalities directly under the Central Government, and to approve the establishment and geographic division of autonomous prefectures, counties, autonomous counties and cities;

(16) to decide on the enforcement of martial law in parts of provinces, autonomous regions and municipalities directly under the Central Government;

(17) to examine and decide on the size of administrative organs and, in accordance with the law, to appoint, remove and train administrative

officers, appraise their work and reward or punish them; and

(18) to exercise such other functions and powers as the National People's Congress or its Standing Committee may assign it.

ARTICLE 90

The Ministers in charge of ministries or commissions of the State Council are responsible for the work of their respective departments and convene and preside over ministerial meetings or commission meetings that discuss and decide on major issues in the work of their respective departments.

The ministries and commissions issue orders, directives and regulations within the jurisdiction of their respective departments and in accordance with the statutes and the administrative rules and regulations, decisions and orders issued by the State Council.

ARTICLE 91

The State Council establishes an auditing body to supervise through auditing the revenue and expenditure of all departments under the State Council

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and of the local governments at different levels, and those of the state financial and monetary organizations and of enterprises and undertakings.

Under the direction of the Premier of the State Council, the auditing body independently exercises its power to supervise through auditing in accordance with the law, subject to no interference by any other administrative organ or any public organization or individual.

ARTICLE 92

The State Council is responsible, and reports on its work, to the National People's Congress or, when the National People's Congress is not in session, to its Standing Committee.

SECTION IV

The Central Military Commission

ARTICLE 93

The Central Military Commission of the People's Republic of China directs the armed forces of the country.

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Article 46

The term of office of the Chief Executive of the Hong Kong Special Administrative Region shall be five years. He or she may serve for not more than two consecutive terms.

Article 47

The Chief Executive of the Hong Kong Special Administrative Region must be a person of integrity, dedicated to his or her duties.

The Chief Executive, on assuming office, shall declare his or her assets to the Chief Justice of the Court of Final Appeal of the Hong Kong Special Administrative Region. This declaration shall be put on record.

Article 48

The Chief Executive of the Hong Kong Special Administrative Region shall exercise the following powers and functions:

- (1) To lead the government of the Region;
- (2) To be responsible for the implementation of this Law and other laws which, in accordance with this Law, apply in the Hong Kong Special Administrative Region;
- (3) To sign bills passed by the Legislative Council and to promulgate laws;

To sign budgets passed by the Legislative Council and report the budgets and final accounts to the Central People's Government for the record;
- (4) To decide on government policies and to issue executive orders;

- (5) To nominate and to report to the Central People's Government for appointment the following principal officials: Secretaries and Deputy Secretaries of Departments, Directors of Bureaux, Commissioner Against Corruption, Director of Audit, Commissioner of Police, Director of Immigration and Commissioner of Customs and Excise; and to recommend to the Central People's Government the removal of the above-mentioned officials;
- (6) To appoint or remove judges of the courts at all levels in accordance with legal procedures;
- (7) To appoint or remove holders of public office in accordance with legal procedures;
- (8) To implement the directives issued by the Central People's Government in respect of the relevant matters provided for in this Law;
- (9) To conduct, on behalf of the Government of the Hong Kong Special Administrative Region, external affairs and other affairs as authorized by the Central Authorities;
- (10) To approve the introduction of motions regarding revenues or expenditure to the Legislative Council;
- (11) To decide, in the light of security and vital public interests, whether government officials or other personnel in charge of government affairs should testify or give evidence before the Legislative Council or its committees;
- (12) To pardon persons convicted of criminal offences or commute their penalties; and
- (13) To handle petitions and complaints.

Article 49

If the Chief Executive of the Hong Kong Special Administrative Region considers that a bill passed by the Legislative Council is not compatible with the overall interests of the Region, he or she may return it to the Legislative Council within three months for reconsideration. If the Legislative Council passes the original bill again by not less than a two-thirds majority of all the members, the Chief Executive must sign and promulgate it within one month, or act in accordance with the provisions of Article 50 of this Law.

Article 50

If the Chief Executive of the Hong Kong Special Administrative Region refuses to sign a bill passed the second time by the Legislative Council, or the Legislative Council refuses to pass a budget or any other important bill introduced by the government, and if consensus still cannot be reached after consultations, the Chief Executive may dissolve the Legislative Council.

The Chief Executive must consult the Executive Council before dissolving the Legislative Council. The Chief Executive may dissolve the Legislative Council only once in each term of his or her office.

Article 51

If the Legislative Council of the Hong Kong Special Administrative Region refuses to pass the budget introduced by the government, the Chief Executive may apply to the Legislative Council for provisional appropriations. If appropriation of public funds cannot be approved because the Legislative Council has already been dissolved, the Chief Executive may, prior to the election of the new Legislative Council, approve provisional short-term appropriations according to the level of expenditure of the previous fiscal year.

Article 52

The Chief Executive of the Hong Kong Special Administrative Region must resign under any of the following circumstances:

- (1) When he or she loses the ability to discharge his or her duties as a result of serious illness or other reasons;
- (2) When, after the Legislative Council is dissolved because he or she twice refuses to sign a bill passed by it, the new Legislative Council again passes by a two-thirds majority of all the members the original bill in dispute, but he or she still refuses to sign it; and
- (3) When, after the Legislative Council is dissolved because it refuses to pass a budget or any other important bill, the new Legislative Council still refuses to pass the original bill in dispute.

Article 53

If the Chief Executive of the Hong Kong Special Administrative Region is not able to discharge his or her duties for a short period, such duties shall temporarily be assumed by the Administrative Secretary, Financial Secretary or Secretary of Justice in this order of precedence.

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. During the period of vacancy, his or her duties shall be assumed according to the provisions of the preceding paragraph.

Article 54

The Executive Council of the Hong Kong Special Administrative Region shall be an organ for assisting the Chief Executive in policy-making.

Article 55

Members of the Executive Council of the Hong Kong Special Administrative Region shall be appointed by the Chief Executive from among the principal officials of the executive authorities, members of the Legislative Council and public figures. Their appointment or removal

The President of the Legislative Council of the Hong Kong Special Administrative Region shall be a Chinese citizen of not less than 40 years of age, who is a permanent resident of the Region with no right of abode in any foreign country and has ordinarily resided in Hong Kong for a continuous period of not less than 20 years.

Article 72

The President of the Legislative Council of the Hong Kong Special Administrative Region shall exercise the following powers and functions:

- (1) To preside over meetings;
- (2) To decide on the agenda, giving priority to government bills for inclusion in the agenda;
- (3) To decide on the time of meetings;
- (4) To call special sessions during the recess;
- (5) To call emergency sessions on the request of the Chief Executive; and
- (6) To exercise other powers and functions as prescribed in the rules of procedure of the Legislative Council.

Article 73

The Legislative Council of the Hong Kong Special Administrative Region shall exercise the following powers and functions:

- (1) To enact, amend or repeal laws in accordance with the provisions of this Law and legal procedures;
- (2) To examine and approve budgets introduced by the government;
- (3) To approve taxation and public expenditure;

- (4) To receive and debate the policy addresses of the Chief Executive;
- (5) To raise questions on the work of the government;
- (6) To debate any issue concerning public interests;
- (7) To endorse the appointment and removal of the judges of the Court of Final Appeal and the Chief Judge of the High Court;
- (8) To receive and handle complaints from Hong Kong residents;
- (9) If a motion initiated jointly by one-fourth of all the members of the Legislative Council charges the Chief Executive with serious breach of law or dereliction of duty and if he or she refuses to resign, the Council may, after passing a motion for investigation, give a mandate to the Chief Justice of the Court of Final Appeal to form and chair an independent investigation committee. The committee shall be responsible for carrying out the investigation and reporting its findings to the Council. If the committee considers the evidence sufficient to substantiate such charges, the Council may pass a motion of impeachment by a two-thirds majority of all its members and report it to the Central People's Government for decision; and
- (10) To summon, as required when exercising the above-mentioned powers and functions, persons concerned to testify or give evidence.

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.

given to the interests of the different sectors of society and the structure must facilitate the development of the capitalist economy in the Region. While the part of the existing political structure proven to be effective will be maintained, a democratic system that suits Hong Kong's reality should gradually be introduced. In accordance with this principle, Chapter IV and Annexes I and II of the Basic Law contain the following major provisions concerning the political structure of the Hong Kong Special Administrative Region:

(1) The relationship between the executive authorities and the legislature. The executive authorities and the legislature should regulate each other as well as co-ordinate their activities. To maintain Hong Kong's stability and administrative efficiency, the Chief Executive must have real power which, at the same time, should be subject to some restrictions. The draft provides for the Chief Executive to be the head of the Hong Kong Special Administrative Region and accountable to the Central People's Government and the Hong Kong Special Administrative Region. He or she is to lead the government of the Region, sign bills and budgets and promulgate laws. If the Chief Executive considers a bill passed by the Legislative Council to be not compatible with the overall interests of the Region, he or she may return it to the Legislative Council for reconsideration. If the Chief Executive refuses to sign a bill passed the second time by the Legislative Council, or the Legislative Council refuses to pass a budget or any other important bill introduced by the government, and if consensus still cannot be reached after consultations, the Chief Executive may dissolve the Legislative Council. On the other hand, the Basic Law provides that the government of the Region must abide by the law and be accountable to the Legislative Council. It must implement laws passed by the Legislative Council and already in force, present regular policy addresses to the Council, answer questions raised by members of the Council and obtain approval from the Council for taxation and public expenditure. The Chief Executive must consult the Executive Council before making important policy decisions, introducing bills to the Legislative Council, enacting subordinate legislation, or dissolving the Legislative Council. The Basic Law also stipulates that if the bill returned by the Chief Executive is passed again by the Legislative Council with at least a two-thirds majority, the Chief Executive must sign and promulgate it within one month, unless he or she dissolves the Legislative Council. If the newly elected Legislative Council, after the old one has

been dissolved, again passes by a two-thirds majority the original bill in dispute, or it still refuses to pass the original budget or any other important bill introduced by the government, the Chief Executive must resign. If the Chief Executive is found to have committed a serious breach of law or dereliction of duty and if he or she still refuses to resign, the Legislative Council may pass a motion of impeachment through the specified procedures and refer it to the Central People's Government for decision. The provisions mentioned above embody the relationship of regulation and co-ordination between the executive authorities and the legislature.

(2) The method for the selection of the Chief Executive. The draft stipulates that the Chief Executive shall be selected by election or through consultations and be appointed by the Central People's Government. The method for selecting the Chief Executive shall be worked out in the light of the actual situation in Hong Kong and applied in a gradual and orderly way. The ultimate goal is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures. Based on these provisions, Annex I provides specific rules on selecting the Chief Executive. In the ten years between 1997 and 2007, the Chief Executive will be elected by a broadly representative election committee. If there is need to amend this method of election after that period, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive, and they must be submitted to the Standing Committee of the National People's Congress for approval. The method for selecting the Chief Executive is provided in an annex to make it more amenable to revision when necessary.

(3) The method for forming the Legislative Council and its procedures for voting on bills and motions. According to the draft Basic Law, the Legislative Council will be constituted by election. The method for forming the Legislative Council will be worked out in the light of the actual situation in Hong Kong and applied in a gradual and orderly way. The ultimate goal is the election of all the members of the Legislative Council by universal suffrage. In accordance with these provisions, Annex II provides specific rules on formation of the Legislative Council. The first and second Legislative Council will be formed by members elected by functional constituencies, by the Election Committee or by geographical constituencies through direct elections. During the first 10

and be accountable to the Region in accordance with the Basic Law.

Regarding selection of the Chief Executive, one question need be explained theoretically, that is, appointment of the Chief Executive by the Central People's Government. The provision that the Chief Executive of the HKSAR shall be selected by election or through consultations held locally and appointed by the Central People's Government prescribed by the Basic Law on the basis of the policy laid down in sub-paragraph (4) of Article 3 of the Sino-British Joint Declaration. Some people held that the Chief Executive should not be appointed by the Central People's Government but should only be elected by Hong Kong people. These people have overlooked the following basic facts: (a) The HKSAR is a local administrative region directly under the Central People's Government, which determines the relationship of the HKSAR with the Central People's Government and its status in this relationship. On the other hand, appointment of the head of the HKSAR by the Central People's Government on the one hand reflects the jurisdiction the Central People's Government exercises over the HKSAR and on the other hand, it makes concrete the legal status of the HKSAR, namely, it is under the jurisdiction of the Central People's Government, and ensures effective protection of such status by law and system. (b) The Chief Executive as the head of the HKSAR represents the Region and is accountable to both the Region and the Central People's Government. Such accountability, as mentioned earlier, is not accountability in form, but in substance. In order to ensure that the Chief Executive is accountable to the Central People's Government, the latter should have a certain kind of power over the former, so that the policies of the latter for the HKSAR are executed

through the former. Appointment of the Chief Executive by the Central People's Government is exactly such a substantive power. (c) The Chief Executive is appointed by the Central People's Government after he is selected through election or consultation instead of being appointed exclusively by the Central People's Government. Election or consultation is a democratic form of extensively soliciting people's opinions. According to Annex I to the Basic Law and the Decision of the National People's Congress on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region, the measure of consultation only applies to selection of the first Chief Executive. The person selected to be the Chief Executive through election or consultation will be appointed by the Central People's Government, thus appointment of the Chief Executive by the Central People's Government is based on full development of democracy and full respect of the will of the masses of Hong Kong residents. Such appointment can ensure that the Chief Executive selected will be loyal to the Basic Law and the HKSAR. Like accountability of the Chief Executive to the Central People's Government, appointment of the Chief Executive by the Central People's Government is not appointment in form, but in substance. If the result of election or consultation does not truthfully reflect the will of the public or it contravenes the principle or the specific provisions of the Basic Law, the Central People's Government may veto the person selected, and the local residents will carry out election or consultation anew in accordance with law.

Article 45 of the Basic Law stipulates, "The method for selecting the Chief Executive shall be specified in the light of the actual

和繁榮的原則。首幾屆的行政長官不由普選產生，1997年對香港是一個根本的政治變化，在此以後的十幾年內儘可能不採用普選選舉行政長官，以保持社會的穩定。要實行普選，可以在第三任行政長官以後。第二，貫徹了循序漸進的原則。如果從第四任行政長官起開始實行由普選產生，要先經過全體選民投票等一系列程序，如果對行政長官的產生辦法要進行其他修改，則不必採取全體選民投票，而可採用另外較為容易的辦法。第三，兼顧了各個階層的願望和利益。這種行政長官產生辦法體現了以大選舉團、功能團體選舉的香港人士的意願，也體現了要求實行普選的一些人士的希望，儘管普選的時間在要2012年之後，但它兼顧了各階層的利益。如上所述，後來對此辦法又作了修改。

行政長官要由中央人民政府任命，有人認為這種任命是形式的，中央人民政府不可以不任命。根據“中英聯合聲明”的精神，中央人民政府的任命應當是實質性的，它可以任命，也可以不任命，當然也可以免去行政長官的職務。這種任命和免職都不是單純的形式，而是體現我國是一個單一制國家，香港特別行政區是我國不可分離的享有高度自治權的一個地方行政區域，直轄於中央人民政府。雖然香港特別行政區享有高度自治權，行政長官在當地選舉或協商產生，但是任免權還在中央人民政府，這是中央與香港特別行政區的關係的一個重要方面，否認中央在這方面的實質權力，就等於取消了中央的這一權力。當然，行政長官在任命之前必須在當地選舉或協商，這是中央與香港特別行政區關係的另一個重要方面，否認這一點，就是否認香港特別行政區在這方面的高度自治權。忽視這兩個重要方面的任何一面都是不對的。這兩個方面的正確結合，才是“一個國家、兩種制度”方針的體現。

爲了兩個方面的正確結合，中央人民政府在任命行政長官時當然要充分考慮香港各界人士的意願和選舉、協商的合法性等情況，不輕易採取否定行政長官的選舉或協商結果，而不予任命。香港特別行政區在選舉或協商產生行政長官時，也將按照“基本法”規定的對行政長官的資格和其他要求，按照“基本法”規定的選舉或協商行政長官的程序，慎重地進行工作。

行政長官的產生，對香港特別行政區或中央人民政府來說，都是一件重大的事情。香港特別行政區應當與中央人民政府配合完成這件大事，而不會是互不通氣，在行政長官產生出來之前，中央人民政府竟一無所知，以致因人選不當而不任命。如果按照“基本法”的規定產生行政

長官，香港特別行政區與中央人民政府又能互相配合，產生與任命問題就能得到正確的解決。

二、行政長官的任期

“基本法”第46條規定，行政長官任期5年，可連任一次。在《英王制誥》和《王室訓令》中沒有規定港督的任期，近一個時期以來港督的任期都不少於5年。^①“中英聯合聲明”中沒有提到行政長官的任期，香港特別行政區基本法起草委員會政治體制專題小組在討論中認為應當規定任期，但對任期的長短有不同的看法。有的認為應當與立法機關每屆的任期聯繫起來考慮，立法機關一屆幾年，行政長官也是幾年，任期應當相同。有的認為行政長官每任應為5年，時間太長不好，容易產生專斷和助長官僚主義的弊端。時間太短，也不利於積累工作經驗，不利於工作的穩定，5年一任比較合適。有的認為任期4年較好，5年長了一些。

政治體制專題小組認為立法機關與行政長官不一定需要每屆任期相同，因為行政長官有解散立法機關的權力，立法機關有要求行政長官辭職的權力，而且行政長官還可能有不到一任滿期而缺位的。立法機關與行政長官的每屆任期即使相同，也沒有實際意義，而且也難以實現。後來沒有採用行政長官與立法機關每屆任期相同的規定。

政治體制專題小組多數委員認為，4年一任，時間短了一些，5年比較長短適宜，遂規定行政長官的任期為5年。

關於行政長官是否可以連任、能夠連任多久？在諮詢中香港各界人士有兩種不同意見：一種意見認為連任次數可以不限；另一種意見認為任期的次數應有限制，任期次數過多，容易產生弊端，連任不應超過兩任，每任5年，連續任職則不應超過10年。最後，第二種意見被採納，這一規定是合適的。

“基本法”還對行政長官職務的臨時代理及缺位代理作了規定。《英王制誥》中規定：港督職位空缺，或港督離港或不能行使其職權時，其職位由王室任命一位官員取代，若無任命，則由現任布政司署理。“基本法”沒有規定設立副的行政長官，因此對於行政長官短期不能履行職務時必須作出有人臨時代理其職務的規定，以免影響工作。“基本法”第53條第1款規定：“香港特別行政區行政長官短期不能履行職務時，由政務司長、財政司長、律政司長依次臨時代理其職務。”這裏所說的短