

立法會
Legislative Council

LC Paper No. CB(2)1379/04-05
(These minutes have been seen
by the Administration)

Ref : CB2/BC/6/04

**Bills Committee on
Chief Executive Election (Amendment)
(Term of Office of the Chief Executive) Bill**

**Minutes of the first meeting
held on Thursday, 14 April 2005 at 8:30 am
in Chamber of the Legislative Council Building**

Members present :

- Hon TAM Yiu-chung, GBS, JP (Chairman)
- Hon Howard YOUNG, SBS, JP (Deputy Chairman)
- Hon James TIEN Pei-chun, GBS, JP
- Hon Albert HO Chun-yan
- Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP
- Hon LEE Cheuk-yan
- Hon Martin LEE Chu-ming, SC, JP
- Dr Hon David LI Kwok-po, GBS, JP
- Dr Hon LUI Ming-wah, JP
- Hon Margaret NG
- Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
- Hon James TO Kun-sun
- Hon CHEUNG Man-kwong
- Hon CHAN Yuen-han, JP
- Hon Bernard CHAN, JP
- Hon CHAN Kam-lam, JP
- Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
- Hon SIN Chung-kai, JP
- Dr Hon Philip WONG Yu-hong, GBS
- Hon WONG Yung-kan, JP
- Hon Jasper TSANG Yok-sing, GBS, JP
- Hon LAU Kong-wah, JP
- Hon LAU Wong-fat, GBS, JP
- Hon Miriam LAU Kin-ye, GBS, JP
- Hon Emily LAU Wai-hing, JP
- Hon CHOY So-yuk
- Hon Andrew CHENG Kar-foo
- Hon Timothy FOK Tsun-ting, GBS, JP
- Hon Abraham SHEK Lai-him, JP

Hon LI Fung-ying, BBS, JP
Hon Frederick FUNG Kin-kee, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon LI Kwok-ying, MH
Dr Hon Joseph LEE Kok-long
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon MA Lik, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Dr Hon Fernando CHEUNG Chiu-hung
Hon CHEUNG Hok-ming, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Patrick LAU Sau-shing, SBS, JP
Hon Albert Jinghan CHENG
Hon KWONG Chi-kin
Hon TAM Heung-man

Members :
absent
Hon Fred LI Wah-ming, JP
Hon LEUNG Yiu-chung
Dr Hon YEUNG Sum
Hon Tommy CHEUNG Yu-yan, JP
Hon Albert CHAN Wai-yip
Hon Daniel LAM Wai-keung, BBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Dr Hon KWOK Ka-ki

Public Officers :
attending
Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

Mr Joseph LAI Yee-tak
Deputy Secretary for Constitutional Affairs

Mr Raymond TAM Chi-yuen
Principal Assistant Secretary for Constitutional Affairs

Mr Bob Allcock
Solicitor General

Mr James O'Neil
Deputy Solicitor General (Constitutional)

Mr Gilbert MO
Deputy Law Draftsman (Bilingual Drafting & Administration)

Clerk in attendance : Mrs Percy MA
Chief Council Secretary (2)3

Staff in attendance : Mr Jimmy MA
Legal Adviser

Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mrs Eleanor CHOW
Senior Council Secretary (2)4

Action

I. Election of Chairman/Deputy Chairman

Mr TAM Yiu-chung and Mr Howard YOUNG were elected Chairman and Deputy Chairman of the Bills Committee respectively.

II. Meeting with the Administration

(LC Paper No. CB(3)465/04-05 – The Bill

CAB C5/1/3 - The Legislative Council Brief on the Bill

LS46/04-05 - The Legal Service Division Report

LC Paper No. CB(2)1268/04-05(02) - Marked-up copy of the Bill

LC Paper No. CB(2)1268/04-05(03) - Background Brief prepared by the Legislative Council Secretariat

LC Paper No. CB(2)1268/04-05(04) - Letter dated 11 April 2005 from Senior Assistant Legal Adviser to the Administration)

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).

3. Members noted the advice of the Administration as follows -

- (a) There was clear legal basis for the Bill. The Government's position on the term of the new Chief Executive (CE) was arrived at after careful and thorough examination by the Secretary for Justice. This position was also supported by the Legislative Affairs Commission of the Standing Committee of the National People's Congress (NPCSC), a working organ of the Central Authorities responsible for matters relating to the Basic Law;

Action

- (b) the maximum number of years of office to be served by the new CE elected on 10 July 2005 was an important issue but not an urgent one that needed to be dealt with by the Bill. The Administration would examine the issue carefully and thoroughly and make known its findings in due course;
- (c) the Bill, if passed, would apply to the CE election on 10 July 2005 and any by-elections held to fill a vacancy in the office of CE arising before the expiry of the second term of office of CE, and would remain in force until new arrangements were introduced for, say, electing the third term CE; and
- (d) on whether the term of office of the current Election Committee (EC) would be extended or a new EC to be constituted to perform the function of electing a new CE to fill a vacancy in the office of CE after the current EC expired on 13 July 2005, the Administration's position was that it would not constitute a new EC lightly as it might hinder the current review on possible changes to the composition of the EC for electing the third term CE in 2007.

4. Members requested the Administration to provide a written response on the following issues -

- (a) The Basic Law (BL) made no express provision for CE to request for an interpretation by NPCSC. How did BL 43 and 48 provide the basis for the Acting CE to make a report to the State Council to request the NPCSC to make an interpretation of BL 53(2) regarding the term of office of the new CE?
- (b) What arrangements would be in place to address the question of the vacuum of EC during the period from 14 July 2005 to early 2007? Whether a new EC would be constituted between the expiry of the term of the current EC and July 2007 and if so, whether it should be so constituted so that it could perform if necessary on or after such expiry the function of electing a new CE to fill any vacancy?
- (c) In the light of Hon Ronny TONG's view, the Administration was requested to improve the drafting of proposed section 3(1A)(b) to remove any ambiguity about the expiry of the term of office having to depend on some definite terms of appointment.
- (d) To ensure that the meaning of "term" in the Bill was consistent with that in the BL, the Administration should clarify whether the meaning of "term" in BL 50 and BL 55 included part of a term served by a CE elected to fill a vacancy in the office of the CE arising before the expiry of the normal five-year term.

Action

- (e) The Administration should explain whether a by-election would be held to fill a vacancy in the office of CE which arose within six months before the expiry of the original term of office.

(Post-meeting note : The Administration's response was issued to members vide LC Paper No. CB(2) 1331/04-05(01) on 20 April 2005)

5. Members agreed that the Research and Library Services Division should be requested to conduct a search and make available for members' reference the historical records of the Basic Law Consultative Committee and the Basic Law Drafting Committee, such as the relevant minutes of meetings relating to the discussions on Articles 46, 53 and Annex I of the Basic Law concerning the term of office of a CE elected to fill a vacancy arising before the expiry of the normal five-year term.

III. Any other business

6. The Chairman referred to the table setting out the available time slots for future meetings and requested members to take note of the tentative meeting dates in their diaries. Members agreed that the next two meetings would be held on Thursday, 21 April 2005 at 8:30 am and Saturday, 23 April 2005 at 9:00 am to meet with the Administration and to receive deputations respectively. Members also agreed that advertisements would be placed in one English newspaper and one Chinese newspaper to invite submissions from the public on the Bill.

(Post-meeting note : In line with the past practice, advertisements were placed in the South China Morning Post and Ming Pao Daily News respectively on 15 April 2005 to invite public views on the Bill. Copies of the advertisements were issued for members' reference vide LC Paper No. CB(2)1294/04-05(01) on 15 April 2005.)

7. The meeting ended at 10:35 am.

**Proceedings of the first meeting of the Bills Committee on
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on Thursday, 14 April 2005 at 8:30 am
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Time Marker	Speaker(s)	Subject(s)	Action required
000000 - 002400	Mr James TIEN Mr TONG Ka-wah Ms Emily LAU Mr TAM Yiu-chung Mr Cheung Man-kwong Mr LEE Wing-tat Mr LAU Kong-wah Mr Albert CHENG Mr Martin LEE	Election of Chairman. Presentation of platform and answering of questions by the two candidates at the election of the Chairman: Mr Ronny TONY and Mr TAM Yiu-chung.	
002401 - 003410	Chairman Ms Emily LAU Mr LAU Kong-wah	Election of Deputy Chairman.	
003411 - 003913	Chairman Adm	Briefing by the Administration on the Bill.	
003914 - 005226	Chairman Mr LEE Cheuk-yan Adm	Basis for the Government of the Hong Kong Administrative Region (HKSARG) to make a report to the State Council to request the Standing Committee of the National People's Congress (NPCSC) to make an interpretation of Article 53(2) of the Basic Law (BL) regarding the term of office of the Chief Executive (CE). The maximum number of years to be served by the new CE elected on 10 July 2005, i.e. whether it should be seven or 12 years. The position of HKSARG on requesting NPCSC to make an interpretation of BL46 regarding the maximum number of years to be served by the new CE elected on 10 July 2005. The meaning of "term" in BL and the Bill, i.e., whether it included part of a term such as remainder of the term of a CE who left office prematurely. Explanation on the scope of the Bill by the Administration.	

Time Marker	Speaker(s)	Subject(s)	Action required
005227 - 010818	Chairman Mr Albert HO Adm	<p>The need for HKSARG to introduce the Bill in the light of its request to NPCSC to make an interpretation of BL53(2).</p> <p>Provision of historical records such as minutes or tape recording of the meetings of the Basic Law Consultative Committee and the Basic Law Drafting Committee, to ascertain the legislative intent regarding the term of office of the new CE.</p> <p>The maximum number of years to be served by the new CE elected on 10 July 2005, i.e. whether it should be seven or 12 years.</p> <p>The meaning of “term” in BL and the Bill, i.e. whether it included part of a term such as remainder of the term of a CE who left office prematurely.</p>	
010819 – 011854	Chairman Ms Emily LAU Adm	<p>The position of HKSARG on requesting NPCSC to make an interpretation of BL46 regarding the maximum number of years to be served by the new CE elected on 10 July 2005.</p> <p>Proposals to introduce amendments to the Bill to cap the number of subscribers for nominating candidates for the office of CE, and to require a poll be conducted in an uncontested election.</p> <p>The timing for clarifying the maximum number of years to be served by the new CE elected on 10 July 2005, i.e. whether it should be seven or 12 years.</p> <p>The Administration to explain the basis for requesting NPCSC to make an interpretation of BL53(2) regarding the term of office of CE under BL 43 and BL 48.</p>	The Administration to provide a written response.
011855 - 013328	Chairman Mr LEE Wing-tat Adm	Request for the LegCo Secretariat to conduct a search and provide the relevant historical records of the Basic Law Consultative Committee and the Basic Law Drafting Committee, such as the minutes of meetings on discussions of BL46, BL53 and Annex I to BL regarding the term of office of a CE elected to fill a vacancy arising before the expiry of the	The Research and Library Services Division to take necessary follow-up action.

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		<p>normal five-year term.</p> <p>Purpose of the Bill.</p> <p>The Administration was requested to provide a written response on the following -</p> <p>(a) what arrangements would be in place to address the question of the vacuum of the Election Committee (EC) during the period from 14 July 2005 to early 2007; and</p> <p>(b) whether a new EC would be constituted between the expiry of the term of the current EC and July 2007 and if so, whether it should be so constituted so that it could perform if necessary on or after such expiry the function of electing a new CE to fill any vacancy?</p>	<p>The Administration to provide a written response.</p>
013329 - 015123	<p>Chairman Mr TONG Ka-wah Adm</p>	<p>The Administration was requested to -</p> <p>(a) improve the drafting of proposed section 3(1A)(b) to remove any ambiguity about the expiry of the term of office having to depend on some definite terms of appointment;</p> <p>(b) clarify whether the meaning of "term" in BL50 and BL55 included part of a term served by a CE elected to fill a vacancy in the office of the CE arising before the expiry of the normal five-year term; and</p> <p>(c) explain whether a by-election would be held to fill a vacancy in the office of CE which arose within six months before the expiry of the original term of office.</p>	<p>The Administration to provide a written response.</p>
015124 - 015144	<p>Chairman Ms Margaret NG</p>	<p>Questions for the Administration.</p>	<p>Ms NG to raise her questions with the Administration in writing.</p>
015145 - 015527	<p>Chairman Mr KWONG Chi-kin Adm</p>	<p>The need for HKSARG to introduce the Bill in the light of its request to NPCSC to make an interpretation of BL53(2).</p>	

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015528 - 020542	Chairman Ms Margaret NG Mr Jeffrey LAM Ms Emily LAU Mr LAU Kong-wah Mr LEUNG Kwok-hung Ms Miriam LAU Mr LEE Wing-tat Ms Sophie LEUNG Deputy Chairman Mr James TIEN	Tentative meeting schedule, and dates of next meetings.	

Council Business Division 2
Legislative Council Secretariat
26 April 2005

**Proceedings of the first meeting of the Bills Committee on
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on Thursday, 14 April 2005 at 8:30 am
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002401 - 003410	Chairman Ms Emily LAU Mr LAU Kong-wah	Election of Deputy Chairman.	
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