

立法會
Legislative Council

LC Paper No. CB(2)1684/04-05
(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 fourth meeting
held on Monday, 25 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
- Hon Fred LI Wah-ming, 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 LEUNG Yiu-chung
- Hon SIN Chung-kai, JP
- Dr Hon Philip WONG Yu-hong, GBS
- Hon WONG Yung-kan, JP
- Hon Jasper TSANG Yok-sing, GBS, JP
- Dr Hon YEUNG Sum
- Hon LAU Kong-wah, JP
- Hon Miriam LAU Kin-ye, GBS, JP
- Hon Emily LAU Wai-hing, JP
- Hon CHOY So-yuk
- Hon Andrew CHENG Kar-foo

Hon Abraham SHEK Lai-him, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Albert CHAN Wai-yip
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
Hon Daniel LAM Wai-keung, BBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
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

**Members
absent** : Dr Hon David LI Kwok-po, GBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon LAU Wong-fat, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon LI Fung-ying, BBS, JP
Hon Frederick FUNG Kin-kee, JP
Dr Hon Joseph LEE Kok-long
Hon MA Lik, JP
Hon LEUNG Kwok-hung
Dr Hon KWOK Ka-ki
Dr Hon Fernando CHEUNG Chiu-hung
Hon TAM Heung-man

**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 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

Mrs Fanny TSANG
Legislative Assistant (2)3

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I. Meeting with the Administration

(LC Paper No. CB(2)1331/04-05(01) – Administration's response to issues raised at the meeting on 14 April 2005

LC Paper No. CB(2)1359/04-05(01) – Article provided by Hon Margaret NG entitled "Rule of Law in Hong Kong : Immigrant Children, the Court of Final Appeal and the Standing Committee of the National People's Congress"

LC Paper No. CB(2)1357/04-05(01) – Administration's response to issues raised at the meeting on 21 April 2005

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

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

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

2. The Administration was requested to provide a written response on the following issues raised by members –

- (a) With reference to the Administration's reply in paragraphs 9 – 11 of LC Paper No. CB(2)1331/04-05(01), Ms Audrey EU pointed out that the Administration had merely given a factual account of what the Acting Chief Executive (CE) had done in relation to Executive Council Members appointed by the CE who had resigned and an assessment of

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whether the meaning of “term” in Article 50 of the Basic Law (BL 50) would be an issue during the period 2002 to 2007. She requested the Administration to respond specifically to the original issues raised from the legal point of view, i.e. to clarify whether the meaning of the word “term” in BL50 and BL55 included part of a term served by a CE elected to fill a vacancy in the office of CE arising before the expiry of the normal five-year term.

- (b) With reference to the Administration’s reply in paragraphs 7 – 9 of LC Paper No. CB(2)1375/04-05(01) and the view of a Mainland legal expert, Mr LEE Wing-tat requested the Administration to give a specific view on whether the term of office of the current Election Committee could be extended when its term expired on 13 July 2005, and to explain in specific terms the actions that it would take in accordance with the Basic Law and the Chief Executive Election Ordinance as suggested in paragraph 9 of that reply.
- (c) With reference to the Administration’s comments on the article provided by her (paragraph 11 of LC Paper No. CB(2)1375/04-05(01)), Ms Margaret NG requested the Administration to provide its comments on another article entitled “Closing Chapter in the Immigrant Children Saga : Substantive Legitimate Expectations and Administrative Justice in Hong Kong” published by Christopher Forsyth and Rebecca Williams in Asia Pacific Law Review Volume I. (2002), which was written as a sequel to the one the Administration had commented on.

(Post-meeting note : The Administration’s response was issued to members vide LC Paper No. CB(2)1391/04-05(01) on 27 April 2005.)

II. Any other business

3. The Administration advised members that it intended to resume the Second Reading debate on the Bill at the Council meeting on 25 May 2005 so that the Bill could be passed before the commencement of the nomination period for CE candidates on 3 June 2005. Ms Margaret NG said that Members belonging to the Article 45 Concern Group considered that the Bill, as presently drafted, was not ready for resumption of Second Reading debate, as it had not addressed members’ concern about its implications on other provisions of the Chief Executive Election Ordinance.

4. Mr Howard YOUNG pointed out that the Bills Committee may need to reserve a meeting to consider any Committee Stage amendments proposed by members. After discussion, the Chairman said that the Bills Committee should proceed with its work on the basis that the Bill would resume its Second Reading debate on 25 May 2005. The Chairman informed members that under the circumstances, the Bills Committee had to complete scrutiny of the Bill by the end of this week or early next

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week in order for the Bills Committee to make a report to the House Committee on 6 May 2005.

5. Members noted that the next meeting would be held on 28 April 2005 at 8:30 am and agreed that a further meeting should be scheduled for 29 April 2005 from 8:30 am to 12:45 pm. If the Bills Committee could not conclude its work on 29 April 2005, members agreed to continue the discussion on Saturday, 30 April 2005. Miss CHAN Yuen-han said that the meeting on Saturday could be extended to the afternoon if necessary.

6. The meeting ended at 10:22 am.

Council Business Division 2
Legislative Council Secretariat
26 May 2005

Annex

**Proceedings of the fourth meeting of the Bills Committee on
Chief Executive Election (Amendment)
(Term of Office of the Chief Executive) Bill
on Monday, 25 April 2005 at 8:30 am
in Chamber of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000000 - 000135	Chairman	Opening remarks.	
000136 - 000640	Admin	Introduction of paper by the Administration (LC Paper No. CB(3)1357/04-05(01)).	
000641- 002214	Chairman Ms Audrey EU Admin	<p>Remarks made by Mr LI Fei, Vice-chairman of the Legislative Affairs Commission of the Standing Committee of the National People's Congress (NPCSC), that the NPCSC's interpretation on Article 53(2) of the Basic Law (BL) regarding the term of office of the Chief Executive (CE) would apply only to the current vacancy.</p> <p>Inconsistency in the scope of the Bill (general application to an unexpected vacancy in the office of CE) and the remarks made by Mr LI Fei (one-off application to current vacancy in the office of CE).</p> <p>The Administration's response on 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 CE arising before the expiry of the normal five-year term (paragraphs 9-11 of LC Paper No. CB(3)1331/04-05(01)).</p>	The Administration to provide a further written response from legal point of view.
002215 - 003613	Chairman Mr TONG Ka-wah Admin	<p>The Administration's position on the applicability of the "remainder of the term" requirement, i.e. whether it was meant for general or one-off application.</p> <p>Failure of the Administration to provide a substantive response to issues raised by members at the meeting on 21 April 2005 (questions (a) and (c) of LC Paper No. CB(3)1357/04-05(01)).</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
003614 - 004522	Chairman Ms Margaret NG Admin	<p>The Administration's comment on the article entitled "The Rule of Law in Hong Kong : Immigrant Children, the Court of Final Appeal and the Standing Committee of the National People's Congress" published by Mark Elliott and Christopher Forsyth in (2000) Asia Pacific Law Review 53 concerning the legality and constitutionality of the HKSARG's decision to request for an interpretation by the NPCSC (question (f) of LC Paper No. CB(3)1357/04-05(01)).</p> <p>Request for the Administration to give views on another article entitled "Closing Chapter in the Immigrant Children Saga : Substantive Legitimate Expectations and Administrative Justice in Hong Kong" published by Christopher Forsyth and Rebecca Williams in Asia Pacific Law Review Volume I. (2002). The article was written as a sequel to the above article which the Administration had already commented on.</p>	The Administration to provide its comments.
004523 - 004938	Chairman Mr LEE Wing-tat Admin	Extension of the term of office of the current Election Committee (EC) upon expiry of its term on 13 July 2005 and actions to be taken in the event of another vacancy in the office of CE arising before 1 July 2007 (paragraphs 7 - 9 of LC Paper No. CB(3)1357/04-05(01)).	The Administration to provide a written response.
004939 - 005839	Chairman Dr YEUNG Sum Admin	Legal basis for introducing the Bill and scope of the Bill.	
005840 - 010307	Chairman Mr Martin LEE	Proposal to adjourn the meeting pending interpretation by NPCSC which might affect the consideration of the Bill.	
010308 -010905	Chairman Mr Albert HO Admin	The need for the Administration to reflect to NPCSC that the "remainder of the term" requirement should be for general application and not an one-off application to the current vacancy in the office of CE.	
010906 - 011708	Chairman Mr KWONG Chi-kin Admin Ms Margaret NG	Inconsistent use of wording by the Acting CE in his statement made in the Council on 6 April 2005 (paragraph 15) and the Report to the State Council to request NPCSC to make an interpretation of BL53(2) regarding the term of office of CE under BL 43 and BL 48 (paragraph 7).	

Time Marker	Speaker(s)	Subject(s)	Action required
011708 - 012032	Chairman Mr CHAN Kam-lam Admin	Applicability of the “remainder of the term” requirement to an unexpected vacancy in the office of CE. Extension of the term of EC upon expiry of its term on 13 July 2005.	
012033 - 012247	Chairman Ms Miriam LAU	Applicability of the “remainder of the term” requirement to an unexpected vacancy in the office of CE.	
012248 - 012557	Chairman Miss CHAN Yuen-han Mr LEUNG Yiu-chung Admin	Transitional arrangements for electing a new CE and forming a new EC in the event of another vacancy arising in the office of CE before the expiry of the second term CE on 30 June 2007.	
012558 - 013607	Chairman Ms Audrey EU Admin Miss CHAN Yuen-han	Applicability of the “remainder of the term” requirement to an unexpected vacancy in the office of CE.	
013608 - 015019	Chairman Dr YEUNG Sum Admin Ms Margaret NG Mr Albert HO Mr Martin LEE Mr James TIEN Mr CHAN Kam-lam Mr KWONG Chi-kin Deputy Chairman	Proposed dates for resumption of Second Reading debate on the Bill and arrangements for future meetings.	