

立法會
Legislative Council

LC Paper No. CB(2)1767/04-05
(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 sixth meeting
held on Friday, 29 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 Martin LEE Chu-ming, SC, JP
- Hon Fred LI Wah-ming, JP
- Dr Hon LUI Ming-wah, JP
- Hon Margaret NG
- Hon CHAN Yuen-han, JP
- Hon CHAN Kam-lam, 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 Wong-fat, GBS, JP
- Hon Miriam LAU Kin-yee, GBS, JP
- Hon CHOY So-yuk
- Hon Abraham SHEK Lai-him, JP
- Hon LI Fung-ying, BBS, 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 MA Lik, 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 Patrick LAU Sau-shing, SBS, JP
Hon Albert Jinghan CHENG
Hon KWONG Chi-kin

Members absent : Hon LEE Cheuk-yan
Dr Hon David LI Kwok-po, GBS, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon Bernard CHAN, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon LEUNG Yiu-chung
Hon SIN Chung-kai, JP
Hon LAU Kong-wah, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Frederick FUNG Kin-kee, JP
Dr Hon Joseph LEE Kok-long
Hon LEUNG Kwok-hung
Dr Hon KWOK Ka-ki
Dr Hon Fernando CHEUNG Chiu-hung
Hon CHIM Pui-chung
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

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I. Meeting with the Administration

(LC Paper No. CB(2)1407/04-05(01) – Text of the interpretation made by the Standing Committee of the National People's Congress on 27 April 2005 regarding Article 53(2) of the Basic Law

LC Paper No. CB(2)1421/04-05(01) – Letter to the Administration setting out the issues raised by members at the meeting on 28 April 2005

LC Paper No. CB(2)1421/04-05(02) – Administration's response to issues raised at the meeting on 28 April 2005

LC Paper No. CB(2)1421/04-05(03) – Proposed amendment to the Bill drafted by the Legal Service Division in response to members' request

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**).

Suggested amendments to the Bill

2. Some members considered that the last paragraph of the interpretation of Article 53(2) of the Basic Law (BL 53(2)) made by the Standing Committee of the National People's Congress on 27 April 2005 (the Interpretation) was not in accord with the original legislative intent of the Basic Law as understood by the Mainland experts, which had been accepted by the Government and reflected in the Bill. The last paragraph of the Interpretation stipulated that, inter alia, that –

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“prior to the year 2007 when the Chief Executive is selected by the Election Committee with a five-year term of office, in the event that the office of the Chief Executive becomes vacant as he (she) fails to serve the full term of office of five years as prescribed by Article 46 of the Basic Law, the term of office of the new Chief Executive shall be the remainder of the previous Chief Executive; and that after 2007, the above-mentioned method for selecting the Chief Executives could be amended, and should the office of the Chief Executive then become vacant, the term of office of the new Chief Executive shall be determined in accordance with the amended method for the selection of the Chief Executive.”

3. Members discussed some suggested amendments to the Bill –

Proposal (a) – to copy the last sentence of the Interpretation into proposed section 3(1A) in clause 2 of the Bill or to reflect its meaning in the clause.

Proposal (b) – to amend proposed section 3(1A) in clause 2 of the Bill to clarify that the terms of office of a new Chief Executive (CE) elected pursuant to BL53(2) had to be determined in accordance with the election method, if amended, in Annex I to the Basic Law (wording of the proposed amendment tabled at the meeting and subsequently issued vide LC Paper No. CB(2)1421/04-05(03)).

Proposal (c) – to replace the word “where” in proposed section 3(1A) in clause 2 of the Bill with "if".

4. The Administration considered proposals (a) and (b) not acceptable for the following reasons –

- (a) at this stage the Administration was in no position to know if the method for selecting the CE after 2007 would or would not be amended, and even if amended, whether it would involve changing the method for selecting the CE by the Election Committee (EC) which had a five-year term of office; and
- (b) in the situation where an amendment was made to Annex I to BL to provide for the third term CE to be elected by an EC which had a different composition but the EC would retain a five-year term of office, the “remainder of the term” requirement stipulated in the Bill would still apply. Proposal (b), however, would render the “remainder of the term” requirement stipulated in the Bill ineffective as long as the method for selecting CE after 2007 was amended in accordance with Annex I to the Basic Law.

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5. While the Administration agreed to consider proposal (c), some members considered that the proposed amendment was cosmetic and failed to address the concern raised.

6. The Administration reiterated that the purpose of the Bill was to provide that the term of office of a CE who filled a vacancy in the office of the CE that arose otherwise than due to expiry of the term of office should last until such expiry, clause 2 of the Bill gave effect to this purpose. The Bill was fully consistent with the Interpretation.

7. Having considered the Administration's views, the Bills Committee agreed not to further pursue the suggested amendments. Members present at the meeting did not indicate that they would propose Committee Stage amendments (CSAs) to the Bill.

II. Any other business

8. Members raised no objection for the Bill to resume Second Reading debate at the Council meeting on 25 May 2005. The Chairman informed members that as the Bills Committee had concluded deliberations on the Bill, it would report to the House Committee on 6 May 2005. He informed members that the meeting originally proposed to be held at 9:00 am on 30 April 2005 was no longer necessary. The Chairman instructed the Secretariat to issue a circular inviting members to advise the Bills Committee of their intention to propose CSAs to the Bill, if any. Subject to members' response, the Bills Committee could hold a meeting on 3 May 2005 to consider the CSAs. The Chairman also reminded members that the deadline for giving notice of CSAs was 14 May 2005.

(Post-meeting note : A circular was issued to members vide LC Paper No. CB(2)1422/04-05 on 29 April 2005. The Secretariat had not received any response from members by the specified deadline.)

9. The meeting ended at 10:55 am.

Council Business Division 2
Legislative Council Secretariat
2 June 2005

Annex

**Proceedings of the sixth meeting of the Bills Committee on
Chief Executive Election (Amendment)
(Term of Office of the Chief Executive) Bill
on Friday, 29 April 2005 at 8:30 am
in Chamber of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000000 - 000102	Chairman	Opening remarks.	
000103 - 000401	Admin	Introduction to the Administration's paper (LC Paper No. CB(2)1421/04-05(01).	
000402 - 001413	Chairman Ms Margaret NG Admin	Legislative intent of the Basic Law (BL) regarding the term of office of the Chief Executive (CE) elected under BL53(2). Remarks made by Mr QIAO Xiaoyang, Deputy Secretary of the Standing Committee of the National People's Congress (NPCSC), on 12 April 2005 and the NPCSC's interpretation made on 27 April 2005 (the Interpretation). Suggestion of amending the word "where" in proposed section 3(1A) in clause 2 of the Bill.	
001414 - 003143	Chairman Mr Albert CHAN Admin Legal Advisor	The Administration's understanding on the term of office of CE elected under BL 53(2) when the Chief Executive Election Bill was scrutinized and passed in 2001. Basis for the Administration's conclusion that the Bill was "fully consistent" with the Interpretation (paragraph 3 of LC Paper No. CB(2)1421/04-05(02)). Nature of the Bill, i.e. declaratory or executory.	
003144 - 004052	Chairman Mr Martin LEE Admin	Comments of and communication with the relevant authorities in the Mainland on the content of the Bill. Need to amend the Bill to reflect the Interpretation on the applicability of the "remainder of the term" requirement before and after 2007.	

Time Marker	Speaker(s)	Subject(s)	Action required
004053 - 005141	Chairman Ms Audrey EU Admin	Options to address the inconsistency of the Bill with the Interpretation: (a) not to enact the Bill; and (b) to copy the last sentence of the Interpretation into proposed section 3(1A) in clause 2 of the Bill or to reflect its meaning in the clause.	
005142 - 010647	Chairman Mr CHAN Kam-lam Legal Advisor Admin	Comments on: (a) Hon Audrey EU's two proposed options; and (b) the proposed amendment to proposed section 3(1A) in clause 2 of the Bill drafted by the Legal Service Division (LSD) (LC Paper No. CB(2)1421/04-05(03)).	
010648 - 011613	Chairman Mr Albert HO Admin Legal Advisor	The purpose of having the words "prior to the year 2007" in the last paragraph of the Interpretation.	
011614 - 012135	Chairman Mr TONG Ka-wah Admin	Principles of enacting legislation: clarity, consistency and not give rise to absurdity. Three issues previously raised by Mr TONG – the suggestion to amend proposed section 3(1A)(b) in clause 2 of the Bill, anomalous consequences resulting from enactment of the Bill, and inconsistency of the Bill with the Interpretation.	
012136 - 013030	Chairman Ms Margaret NG Admin	Nature of the Bill, i.e. declaratory or executory. The issue of whether a subsequent enactment prevailed over a previous one. Consistency of the legislative intent of BL with the Interpretation concerning the term of office of CE elected under BL53(2). Need for enacting the Bill in view of the Interpretation.	
013031 - 015113		Break	
015114 - 015507	Chairman	Clause-by-clause examination of the Bill. Long title and clause 1.	

Time Marker	Speaker(s)	Subject(s)	Action required
015508 - 015801	Admin Legal Advisor	Clause 2. Proposed amendment drafted by LSD.	
015802 – 020219	Chairman Mr Martin LEE Admin	Consistency of the legislative intent of BL with the Interpretation concerning the term of office of CE elected under BL53(2).	
020220 - 020436	Chairman Mr CHAN Kam-lam Admin	Comment on the drafting of the Bill and proposed amendment to the Bill drafted by LSD.	
020437 - 020641	Chairman Admin Mr CHAN Kam-lam Mr TONG Ka-wah	Comment on replacing the word “where” in proposed section 3(1A) in clause 2 of the Bill with “if”.	
020642 - 021554	Ms Audrey EU Admin Mr KWONG Chi-kin	Comments on the Administration’s position not to copy the last sentence of the Interpretation into proposed section 3(1A) or to reflect its meaning in the clause, and not to introduce consequential amendments to the Chief Executive Election Ordinance.	
021555 - 021803	Mr Martin LEE Admin	Introduction of amendments to the Bill to reflect the Interpretation.	
021804 - 022116	Chairman	Intention of the Administration to amend the Bill. Date for resumption of Second Reading debate on the Bill and the deadline for giving notice of Committee Stage amendments to the Bill. Further meeting to discuss members’ CSAs, if necessary.	