

(Unofficial Translation from Chinese text)

LC Paper No. CB(2) 1278 /04-05(01)

A spokesperson for the Legislative Affairs Commission of the Standing Committee of the National People's Congress gave a speech on the issue relating to the term of office of the Chief Executive returned in a by-election in the event that the office of the second term Chief Executive of the HKSAR became vacant

[Xinhua News Agency, Beijing, 12 March] On 12 March, the State Council approved the request for resignation of the Chief Executive of the HKSAR, Mr Tung Chee Hwa. Subsequently, the Government of the HKSAR clearly announced that the term of office of the Chief Executive returned in a by-election in the event that the office of the second term Chief Executive of the HKSAR became vacant was the remaining term of the outgoing Chief Executive. The spokesperson for the Legislative Affairs Commission of the Standing Committee of the National People's Congress gave a speech on the matter. The contents of the speech are as follows:

The opinion given by the Government of the HKSAR on the issue relating to the term of office of the Chief Executive returned in a by-election in the event that the office of the second term Chief Executive becomes vacant is consistent with the legislative intent of the Basic Law. The Chief Executive returned in a by-election by the Election Committee with a term of 5 years in the event that the office of the second term Chief Executive becomes vacant is still the second term Chief Executive, and his term of office should be the remaining term of the outgoing Chief Executive.

To understand the issue of the term of office of the Chief Executive returned in a by-election, we cannot only consider the provisions in BL 46, i.e., "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." We have to consider them together with the provisions in Annex I as regards the method for the selection of the Chief Executive. During the drafting process of the Basic Law, there were different views on the issue of the term of office of the Chief Executive returned in a by-election in the event that the office of Chief Executive became vacant. Some advocated the remaining term, and some advocated a new term of 5 years. Accordingly, the drafting of the provisions in BL 53 as regards a by-election in the event that the office of Chief Executive became vacant underwent a period of changes. The Draft Basic Law of the HKSAR (for Solicitation of Opinions) published in April 1988 expressly provided: "in the event that the office of Chief Executive becomes vacant, a new term Chief Executive shall be selected within six months". In the Basic Law of the HKSAR (draft) published in January 1989 and the Basic Law of the HKSAR adopted by the Seventh National People's Congress at its Third Session in April 1990, such a provision was amended to

read: “[i]n 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”. (In BL 53) the word “term” was deleted and “a new term Chief Executive” was amended as “a new Chief Executive”. This clearly indicates that the Chief Executive returned in a by-election is only a “new one”. Nothing is said as to whether his term of office is the remaining term or a new term of 5 years. It is worthwhile to note that the deletion of “term” was made in conjunction with the addition of “selected ... in accordance with the provisions of Article 45 of this Law”. Accordingly, the term of office of the new Chief Executive should be based on BL 45. BL 45 provides: “[t]he specific method for selecting the Chief Executive is prescribed in Annex I: ‘Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region’.” Annex I provides: “[t]he Chief Executive shall be elected by a broadly representative Election Committee in accordance with this Law and appointed by the Central People’s Government.” “The term of office of the Election Committee shall be five years.” The establishment of a election committee (with a term of 5 years) whose only task, power and function is to elect the Chief Executive is a unique and special election system. The purpose of Annex I to the Basic Law which provides for the establishment before 2007 of a election committee with a term of 5 years to elect the Chief Executive is to return a new Chief Executive in a by-election in a timely fashion in the event that the office of Chief Executive becomes vacant within such a period of 5 years so that he can serve for the remaining term. Annex I provides that subsequent to the year 2007, the method for selecting the Chief Executives may be amended. For example, if the method is amended to provide that the Election Committee shall upon the election of the Chief Executive be dissolved immediately, then, in such circumstances, in the event that the office of Chief Executive becomes vacant, the term of office of the new Chief Executive returned in a by-election will not be the remaining term. The Basic Law is a long-term document. Amending “a new term Chief Executive” as “a new Chief Executive” can accommodate different situations.

We can therefore see that the term of office of “a new Chief Executive” in BL 53 is determined by the method of election. Under a system where the second term Chief Executive was selected through election by a election committee with a term of 5 years, the term of office of the new Chief Executive returned in a by-election by such an election committee in the event that the office of the second term Chief Executive becomes vacant is the remaining term of the outgoing Chief Executive. Article 7 of Annex I to the Basic Law of the HKSAR provides: “[i]f there is a need to amend the method for selecting the Chief Executives for the terms subsequent to the year 2007, 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 shall

be reported to the Standing Committee of the National People's Congress for approval." The Decision of the Standing Committee of the National People's Congress on Issues Relating to the Methods for Selecting the Chief Executive of the Hong Kong Special Administrative Region in the Year 2007 and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2008 dated April 2004 provides: "[t]he election of the third term Chief Executive of the Hong Kong Special Administrative Region to be held in the year 2007 shall not be by means of universal suffrage." Subject to the above, "appropriate amendments that conform to the principle of gradual and orderly progress" may be "made to the specific method for selecting the third term Chief Executive of the Hong Kong Special Administrative Region in the year 2007". Such provisions clearly indicate that the third term Chief Executive will be selected in 2007 in accordance with the election method prevailing at that time. In the event that the office of the second term Chief Executive becomes vacant, the new Chief Executive returned in a by-election by the Election Committee which elected the second Chief Executive is still the second term Chief Executive. Accordingly, his term of office should be the remaining term of the outgoing Chief Executive. This is the only interpretation which is consistent with the above provisions of Annex I to the Basic Law of the HKSAR and the Decision of the Standing Committee of the National People's Congress.