

(By fax and by post)

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22 April 2005

Secretary for Constitutional Affairs
(Attn : Mr Raymond TAM)
Constitutional Affairs Bureau
3rd floor Main and East Wings
Central Government Offices
Hong Kong

Dear Mr TAM,

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

Follow up to meeting on 21 April 2005

At yesterday's meeting, members raised a number of issues and requested for the Administration's written response. These issues are summarised below.

- (a) According to the Administration's reply to a question raised at the meeting on 14 April 2005, BL 53 stipulates that in the event that the office of the Chief Executive (CE) becomes vacant, a new CE shall be selected within six months. If a vacancy arises within six months before the expiry of the term of office of CE whose office has become vacant, there is no need to hold a by-election, and arrangements would be in hand for the next CE election before the end of that term in time for the person elected to be appointed and start a new term of office. The Administration is requested to explain the basis of its reply. A Member has pointed out that neither BL 53 nor the relevant provisions of Chief Executive Election Ordinance (CEEO) e.g. sections 6 and 10 have express provisions providing that a by-election is not required under such circumstances.
- (b) Given that CEEO is designed on the basis that the term of office of any new CE is five years, the amendment proposed in the Bill which is predicated on the new concept of "remainder of the term of office" will have implications on other provisions of CEEO. The Administration is requested to review all relevant provisions of CEEO with a view to introducing the relevant and necessary consequential amendments to

CEEEO to address any anomalies that would arise as a result of the enactment of the amendment proposed in the Bill. It should also provide a timetable/contingency plan as regards the introduction of such amendments.

- (c) If for example a vacancy occurs in the office of CE, say 200 days before the expiry of the five-year term, two elections may be required to be held concurrently or within a very short span of time: one to return a candidate for appointment to fill that vacancy under the proposed new section 3(1A), and another to fill the vacancy which will arise under section 4(a) of CEEEO. In the same scenario, if a legal challenge is mounted against the election result of the first-mentioned election at the end of the 30 day period allowed under section 39 of CEEEO, the challenge could be rendered futile even if successful because by the time a determination is made, the CE invalidly elected would have already served almost the whole of his short remaining term. The Administration is requested to address these anomalous consequences.
- (d) The Administration is requested to confirm whether the term of office of the current Election Committee (EC) could be extended despite its expiry in case an EC is required to elect a new CE to fill another vacancy that arises before 1 July 2007, but after a date which makes it impossible for the current EC to hold the election..
- (e) In response to a Member's concern about the fact that the term of office of the current EC will expire soon on 13 July 2005 and the electoral arrangements for filling another vacancy in the office of CE if it arises shortly, say six to seven months, before 1 July 2007, the Administration advises that it has studied the related issues in consultation with the Mainland authorities, as these issues concern the relationship between the Central Authorities and the HKSAR. The Administration is requested to elaborate on the issues studied and the response so far received from the Mainland authorities.
- (f) A Member has referred to 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 HKSAR Government's decision to request for an interpretation by the Standing Committee of the National People's Congress (attached). The Administration is requested to provide its comments on the points raised in the article.

I should be grateful if you would let me have your bilingual response (with soft copy via e-mail ftsang@legco.gov.hk) for the consideration of the Bills Committee **as soon as possible**.

With best regards,

Yours sincerely,

(Mrs Percy MA)
Clerk to Bills Committee

Encl.