

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

Follow up to meeting on 25 April 2005

(a) *The meaning of the word "term" in BL 50 and BL 55*

1. As stated in the Administration's letter dated 20 April 2005, we agree that it is essential that the meaning of the word "term" in the Bill should be consistent with the Basic Law. It is our considered opinion that this is the case.
2. Regarding Article 50 of the Basic Law, we note that the preceding Chief Executive had not dissolved the Legislative Council under this Article. Thus, Article 50 should not be an issue which needs to be dealt with immediately. We consider that this is an important issue, but not an urgent one that needs to be addressed in the context of the current Bill.
3. Article 55 of the Basic Law stipulates that Members of the Executive Council shall be appointed by the Chief Executive. Their appointment or removal shall be decided by the Chief Executive. The term of office of Members of the Executive Council shall not extend beyond the expiry of the term of office of the Chief Executive who appoints them.
4. The powers and functions of the Acting Chief Executive under the Basic Law are the same as those of the Chief Executive. They include the appointment and removal of Members of the Executive Council.
5. As mentioned in the Administration's letter dated 20 April 2005, the Acting Chief Executive has already invited all serving Members of the Executive Council to stay on and they have all agreed to do so. Therefore, the constitutionality of the present Executive Council is not in doubt.

(b) *Extension of the term of the current Election Committee*

6. At the Bills Committee meeting on 25 April 2005, a Member referred to a view expressed by a Mainland legal expert that the term of the current Election Committee may be extended beyond its expiry date. We have taken note of that view.
7. As stated in the Administration's letter dated 23 April 2005, Annex I to the Basic Law stipulates that "the term of office of the Election Committee shall be five years". Section 9 of the Chief Executive Election Ordinance stipulates that "the term of office of the Election Committee shall be 5 years commencing on the date on which it is constituted."
8. The current Election Committee was constituted on 14 July 2000. Its term will therefore expire on 13 July 2005.
9. After explained before, the position of the SAR Government is that we will not form a new Election Committee lightly as this may hinder the review of the method for selecting the Chief Executive in 2007. In the event of the office of the Chief Executive falling vacant again before 1 July 2007, the SAR Government will act in accordance with the Basic Law and the Chief Executive Election Ordinance. If necessary, we may consider forming a Election Committee, but the possible implications to the review of the method for selecting the Chief Executive in 2007 must be carefully considered.

(c) *The Administration's comments on the 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).*

10. As explained in the Administration's letter of 23 April 2005, in the light of the CFA's decisions in *Lau Kong Yong v Director of Immigration* [1999] 3 HKLRD 778 and *Director of Immigration v Chong Fung Yuen* [2001] 2 HKLRD 533, the NPCSC's power of interpretation extends to every provision in the Basic Law and is not limited to the excluded provisions referred to in BL158(3). An NPCSC interpretation can be issued other than in the circumstances provided for in BL158(3). Moreover, by virtue of his

constitutional powers and functions under BL43 and BL48(2), it is lawful for the CE to make a report to the State Council and to recommend that an NPCSC interpretation of the relevant provision(s) of the Basic Law be requested if he is of the opinion that such an Interpretation is necessary for an effective implementation of the Basic Law.

11. It is clear from the Basic Law that the power of interpretation of the Basic Law is vested in the NPCSC. At the same time, the CFA holds the power of final adjudication over court cases arising in HK. This is no contradiction between the two.