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## Fact Sheet

### Legislative Provisions in relation to Election of the Chief Executive

#### 1. Term of Office of the Chief Executive

##### Provisions in the Basic Law

###### Article 46<sup>1</sup>

*"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."*

##### Provisions in the Chief Executive Election Ordinance

###### *Term of office of Chief Executive*

###### Section 3

- " (1) The term of office of the Chief Executive shall-*
- (a) be 5 years; and*
  - (b) commence on the date on which he assumes office being the date specified for this purpose by the Central People's Government in the instrument of appointment.*
- (2) No person shall hold the office of the Chief Executive for more than 2 consecutive terms.*
- (3) The date on which the term of office of the Chief Executive commences shall be published by notice in the Gazette."*

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<sup>1</sup> On 5 May 2004, Hon Emily LAU raised a LegCo question concerning the term of office of the Chief Executive elected to fill a casual vacancy. The Government replied that "[t]he term of office of the Chief Executive, as prescribed in the Basic Law, is five years. This provision applies to any Chief Executive. There is no exception. .... , any amendment to the Chief Executive Election Ordinance which would provide for a term of office other than that of five years is not consistent with the Basic Law." (for further details, see Appendix 1)

## 2. Resignation of the Chief Executive

### Provisions in the Basic Law

#### Article 52

*"The Chief Executive of the Hong Kong Special Administrative Region must resign under any of the following circumstances:*

- (1) When he or she loses the ability to discharge his or her duties as a result of serious illness or other reasons;*
- (2) When, after the Legislative Council is dissolved because he or she twice refuses to sign a bill passed by it, the new Legislative Council again passes by a two-thirds majority of all the members the original bill in dispute, but he or she still refuses to sign it; and*
- (3) When, after the Legislative Council is dissolved because it refuses to pass a budget or any other important bill, the new Legislative Council still refuses to pass the original bill in dispute."*

## 3. Removal of the Chief Executive

### Provisions in the Basic Law

#### Article 73(9)

*"The Legislative Council of the Hong Kong Special Administrative Region shall exercise the following powers and functions:*

.....

- ( 9 ) If a motion initiated jointly by one-fourth of all the members of the Legislative Council charges the Chief Executive with serious breach of law or dereliction of duty and if he or she refuses to resign, the Council may, after passing a motion for investigation, give a mandate to the Chief Justice of the Court of Final Appeal to form and chair an independent investigation committee. The committee shall be responsible for carrying out the investigation and reporting its findings to the Council. If the committee considers the evidence sufficient to substantiate such charges, the Council may pass a motion of impeachment by a two-thirds majority of all its members and report it to the Central People's Government for decision; and*

....."

#### 4. Vacancy of the Chief Executive

##### Provisions in the Basic Law

###### Article 53<sup>2</sup>

*"If the Chief Executive of the Hong Kong Special Administrative Region is not able to discharge his or her duties for a short period, such duties shall temporarily be assumed by the Administrative Secretary, Financial Secretary or Secretary of Justice in this order of precedence.*

*In 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. During the period of vacancy, his or her duties shall be assumed according to the provisions of the preceding paragraph."*

##### Provisions in the Chief Executive Election Ordinance

###### *Vacancy in office*

###### Section 4

*"The office of the Chief Executive becomes vacant-*

- (a) on the expiry of the term of office of the Chief Executive;*
- (b) if the Chief Executive dies; or*
- (c) if the Central People's Government removes the Chief Executive from office in accordance with the Basic Law."*

###### *Declaration of vacancy*

###### Section 5

*" (1) Where the office of the Chief Executive becomes vacant under section 4(b) or (c) [if the Chief Executive dies or if the Central people's government removes the Chief Executive from office], the Acting Chief Executive shall, by notice published in the Gazette, declare the vacancy.*

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<sup>2</sup> The wording of Article 53 was changed during the drafting process of the Basic Law. See Appendix 2 for details.

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- (2) *A declaration under subsection (1) shall -*
- (a) *be made within 21 days after the Acting Chief Executive becomes aware of the vacancy; and*
  - (b) *specify the date on which the office became vacant."*

## **5. Method of Election of the Chief Executive**

### Provisions in the Basic Law

#### Article 45<sup>3</sup>

*"The Chief Executive of the Hong Kong Special Administrative Region shall be selected by election or through consultations held locally and be appointed by the Central People's Government.*

*The method for selecting the Chief Executive shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.*

*The 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"."*<sup>4</sup>

### Provisions in the Chief Executive Election Ordinance

#### *Election to fill vacancy in office*

#### Section 6 (a) – (c)

*"An election shall be held in accordance with-*

- (a) *the Basic Law;*
- (b) *this Ordinance; and*

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<sup>3</sup> The Standing Committee of the National People's Congress on 26 April 2004 adopted a decision in relation to this Article. (see Appendix 3 for details)

<sup>4</sup> The Standing Committee of the National People's Congress on 6 April 2004 adopted an interpretation in relation to Article 7 of Annex 1. (see Appendix 4 for details)

- (c) *any other enactment which applies to the election of the Chief Executive,*

*to return a candidate for appointment by the Central People's Government to fill the vacancy in the office of the Chief Executive -"*

### *Polling Date*

#### *Section 10(2)*

*"..... the date of the poll at an election to return a candidate for appointment to fill the vacancy in the office of the Chief Executive that arises under section 4(b) or (c) [if the Chief Executive dies or if the Central people's government removes the Chief Executive from office] shall, where the 120th day after the date on which the office becomes vacant as specified under section 5(2)(b)-*

- (a) *is a Sunday, be that Sunday; or*
- (b) *is not a Sunday, be the Sunday immediately following that day. "*

### *Publication of polling date*

#### *Section 12*

*"A polling date fixed in accordance with section 10 or 11 shall be published by notice in the Gazette."*

### *Disqualification from being nominated*

#### *Section 14*

*".....a person is disqualified from being nominated as a candidate if-*

- (a) *he is the Chief Executive and holds the office of the Chief Executive for the second consecutive term;*
- (b) *he is a judicial officer.....;*
- (c) *he is a prescribed public officer<sup>5</sup>;*

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<sup>5</sup> Under Section 2 of the Chief Executive Election Ordinance, "prescribed public officer" means, inter alia, any person holding an office, whether permanent or temporary, in a Government department or bureau and employed in the department or bureau.

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- (d) *he is adjudged bankrupt under the Bankruptcy Ordinance .....*;
  - (e) *[passport requirements]*;
  - (f) *he has, in Hong Kong or any other place, been sentenced to death .....*;
  - (g) *he has been convicted of treason*;
  - (h) *[conviction of other offenses] ; or*
  - (i) *[mental incapacity]."*

#### *Voting by members of Election Committee*

##### *Section 25*

- "(1) ....., only the members of the Election Committee whose names appear on the final register of members of the Election Committee can vote at a poll.*
- (2) The votes at a poll shall be cast by secret ballot.*
- (3) At a poll each member of the Election Committee is entitled to cast a single vote in each round of voting."*

#### *Winning candidate presumed to be duly elected*

##### *Section 29*

*"A person declared under section 28 as elected at an election is presumed to be duly elected until he is ruled by the Court or the Court of Final Appeal pursuant to the determination of an election petition or otherwise as not duly elected."*

#### *Who may lodge election petition*

##### *Section 33(1)*

*"An election petition-*

- (a) may be lodged by any candidate in the election; or*
- (b) may be lodged by-*
  - (i) a person who was determined under section 17 to be not validly nominated;*

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- (ii) *a person the nomination of whom was not accepted by the Returning Officer; or*
  - (iii) *a person who was disqualified under section 20(1) from being elected, provided that the election petition is, subject to subsection (4), subscribed to by not less than 10 members of the Election Committee in the manner specified in subsection (2)."*

*Period within which election petition must be lodged*

Section 34(1)

*"An election petition questioning an election must be lodged within 7 working days after the day on which the result of the election is declared under section 28."*

**6. Election Committee**

Provisions in the Basic Law

Annex 1 (see Appendix 5 for the whole Annex)

*"The Election Committee shall be composed of 800 members ..... The term of office of the Election Committee shall be five years. .... The delimitation of the various sectors, the organizations in each sector eligible to return Election Committee members and the number of such members returned by each of these organizations shall be prescribed by an electoral law enacted by the Hong Kong Special Administrative Region in accordance with the principles of democracy and openness.*

*Corporate bodies in various sectors shall, on their own, elect members to the Election Committee, in accordance with the number of seats allocated and the election method as prescribed by the electoral law.*

*Members of the Election Committee shall vote in their individual capacities."*

Provisions in the Chief Executive Election Ordinance

*Election by Election Committee*

Section 7

*"The Chief Executive shall be elected by the Election Committee as prescribed in Annex I to the Basic Law."*

### *Constitution of Election Committee*

#### Section 8

- "(1) *There shall be constituted a committee, to be known as the Election Committee, for the purposes of this Ordinance and such other purposes as may be prescribed by any other Ordinance.*
- (2) *Subject to subsection (3), the Election Committee shall be constituted in accordance with the Schedule.*
- (3) *The Election Committee constituted on 14 July 2000 under the Legislative Council Ordinance (Cap. 542) shall be continued and regarded as having been constituted as the first Election Committee under this Ordinance.*
- (4) *The members of the Election Committee constituted on 14 July 2000 under the Legislative Council Ordinance (Cap. 542) shall, subject to the Schedule, be members of the first Election Committee constituted under this Ordinance."*

### *Term of office of Election Committee*

#### Section 9

*"The term of office of the Election Committee shall be 5 years commencing on the date on which it is constituted."*

## **7. The Executive Council**

### Provisions in the Basic Law

#### Article 55

*"Members of the Executive Council of the Hong Kong Special Administrative Region shall be appointed by the Chief Executive from among the principal officials of the executive authorities, members of the Legislative Council and public figures. 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.*



*Members of the Executive Council of the Hong Kong Special Administrative Region shall be Chinese citizens who are permanent residents of the Region with no right of abode in any foreign country.*

*The Chief Executive may, as he or she deems necessary, invite other persons concerned to sit in on meetings of the Council."*

## **8. Principal Officials<sup>6</sup>**

### Provisions in the Basic Law

#### Article 60

*"The head of the Government of the Hong Kong Special Administrative Region shall be the Chief Executive of the Region.*

*A Department of Administration, a Department of Finance, a Department of Justice, and various bureaux, divisions and commissions shall be established in the Government of the Hong Kong Special Administrative Region."*

#### Article 61

*"The principal officials of the Hong Kong Special Administrative Region shall be Chinese citizens who are permanent residents of the Region with no right of abode in any foreign country and have ordinarily resided in Hong Kong for a continuous period of not less than 15 years."*

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<sup>6</sup> There is no provision in the Basic Law regarding the term of office of the Principal Officials under the Accountability System. However, in his address to the Council on the Accountability System for Principal Officials on 17 April 2002, the Chief Executive said that *"the upper echelon of the Government, including the Chief Secretary for Administration, Financial Secretary, Secretary for Justice and all Directors of Bureau, will be covered by the Accountability System. These officials will be appointed on contract terms as Principal officials under the Accountability System. They may serve for a term of five years, but not exceeding that of the Chief Executive who nominates them."*

**Appendix 1****LegCo Question raised by Hon Emily LAU on 5 May 2004 concerning the term of office of the Chief Executive elected to fill a casual vacancy****MS EMILY LAU:**

*Madam President, Article 46 of the Basic Law stipulates that "The term of office of the Chief Executive of the Hong Kong Special Administrative Region shall be five years ...". In this connection, will the executive authorities inform this Council whether they have assessed if it is in compliance with the Basic Law to specify in the Chief Executive Election Ordinance (Cap. 569) that where a vacancy arises in the office of the Chief Executive before the expiry of a full five-year term, the Chief Executive elected to fill such a vacancy will only serve out the term of office of the preceding Chief Executive; if the assessment result is in the affirmative, whether they will amend the Ordinance to that effect; if they will not, of the reasons for that; if the assessment result is in the negative, of the justifications for that?*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS:**

Madam President, Article 46 of the Basic Law provides that the term of office of the Chief Executive of the Hong Kong Special Administrative Region shall be five years. Article 53 provides that in the event that the office of the Chief Executive becomes vacant, a new Chief Executive shall be selected within six months in accordance with the provisions of the Basic Law. The Chief Executive Election Ordinance, and in particular sections 3 and 6, gives effect to the above provisions of the Basic Law in respect of the term of office of the Chief Executive and the election to return a candidate for appointment to fill a vacancy in the office of the Chief Executive.

The term of office of the Chief Executive, as prescribed in the Basic Law, is five years. This provision applies to any Chief Executive. There is no exception.

In the light of the above, any amendment to the Chief Executive Election Ordinance which would provide for a term of office other than that of five years is not consistent with the Basic Law.

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**Appendix 2****Comparison of Article 53 in the Draft Basic Law for Solicitation of Opinions and the Basic Law (Draft)**

## Article 53 in the Draft Basic Law for Solicitation of Opinions

*"If the Chief Executive of the Hong Kong Special Administrative Region is not able to discharge his/her duties for a brief period, such duties shall temporarily be assumed by Administrative Secretary, Financial Secretary, Secretary of Justice in this order of precedence.*

*In the event that the office of Chief Executive becomes vacant, a new Chief Executive shall be selected within six months, and during the period of vacancy, his/her duties shall be assumed according to the provisions of the preceding Paragraph."*

「香港特別行政區行政長官短期不能履行職務時，依次由政務司長、財政司長、律政司長臨時代理其職務。」

行政長官缺位時，應在六個月內產生新的一屆行政長官。行政長官缺位期間的職務代理，依照上款規定辦理。」

## Article 53 in the Basic Law (Draft)

*"If the Chief Executive of the Hong Kong Special Administrative Region is not able to discharge his/her duties for a brief period, such duties shall temporarily be assumed by the Administrative Secretary, Financial Secretary or Secretary of Justice in this order of precedence.*

*In 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. During the period of vacancy, his/her duties shall be assumed according to the provisions of the preceding paragraph."*

「香港特別行政區行政長官短期不能履行職務時，由政務司長、財政司長、律政司長依上述順序臨時代理其職務。」

行政長官缺位時，應在六個月內依本法第四十五條的規定產生新的行政長官。行政長官缺位期間的職務代理，依照上款規定辦理。」

Source: Secretariat of the Consultative Committee for the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, (1989) *Reference Papers for the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Draft)*.

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**Appendix 3****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**

" .....

.....

1. *The election of the third Chief Executive of the Hong Kong Special Administrative Region to be held in the year 2007 shall not be by means of universal suffrage. ....*

2. *Subject to Article 1 of this Decision not being contravened, appropriate amendments that conform to the principle of gradual and orderly progress may be made to the specific method for selecting the third Chief Executive of the Hong Kong Special Administrative Region in the year 2007 and the specific method for forming the Legislative Council of the Hong Kong Special Administrative Region in the fourth term in the year 2008 according to the provisions of Articles 45 and 68 of the Hong Kong Basic Law and the provisions of Article 7 of Annex I and Article III of Annex II to the Hong Kong Basic Law.*

*The Session is of the view that developing democracy in the Hong Kong Special Administrative Region in the light of the actual situation and in a gradual and orderly manner according to the provisions of the Hong Kong Basic Law has all along been the resolute and firm stance of the Central Authorities. With the development and progress in all aspects of the Hong Kong society and through the joint endeavours of the Government of the Hong Kong Special Administrative Region and Hong Kong residents, the democratic system of the Hong Kong Special Administrative Region will certainly be able to progress forward incessantly, and ultimately attain the aims of selecting the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures and electing all the members of the Legislative Council by universal suffrage provided for the Hong Kong Basic Law."*

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**Appendix 4****The Interpretation by the Standing Committee of the National People's Congress of Article 7 of Annex I and Article III of Annex II to the Basic Law of the Hong Kong Special Administrative Region of the Peoples' Republic of China**

" ..... the Standing Committee of the National People's Congress has decided to make, ....., an interpretation of the provisions of Article 7 of Annex I "Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region" to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China regarding "If 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" and the provisions of Article III of Annex II "Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures" regarding "With regard to the method for forming the Legislative Council of the Hong Kong Special Administrative Region and its procedures for voting on bills and motions after 2007, if there is a need to amend the provisions of this Annex, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for the record" as follows:

1. ....
2. The provisions in the two above-mentioned Annexes that "if there is a need" to amend the method for selecting the Chief Executives for the terms subsequent to the year 2007 or the method for forming the Legislative Council and its procedures for voting on bills and motions after 2007 mean they may be amended or remain unamended.
3. The provisions in the two above-mentioned Annexes that any amendment 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 shall be reported to the Standing Committee of National People's Congress for approval or for the record mean the requisite legislative process through which the method for selecting the Chief Executive and the method for forming the Legislative Council and its procedures for voting on bills and motions are amended. Such an amendment may take effect only if it has gone through the said process, including the approval or recording ultimately given or made by the Standing Committee of the National People's Congress in accordance with law. The Chief Executive of the Hong Kong Special Administrative Region shall make a report to the Standing Committee of the National People's Congress as regards whether there is a need to make an amendment; and the Standing Committee of the National People's Congress shall, in accordance with the provisions of Article 45 and 68 of the Basic Law of the Hong Kong Special Administrative Region of the People's

**Appendix 4 (cont'd)**

*Republic of China, make a determination in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The bills on the amendments to the method for selecting the Chief Executive and the method for forming the Legislative Council and its procedures for voting on bills and motions and the proposed amendments to such bills shall be introduced by the Government of the Hong Kong Special Administrative Region into the Legislative Council.*

4. *If no amendment is made to the method for selecting the Chief Executive, the method for forming the Legislative Council and its procedures for voting on bills and motions as stipulated in the two above-mentioned Annexes, the provisions relating to the method for selecting the Chief Executive in Annex I will still be applicable to the method for selecting the Chief Executive, and the provisions relating to the method for forming the third term of the Legislative Council in Annex II and the provisions relating to its procedures for voting on bills and motions in Annex II will still be applicable to the method for forming the Legislative Council and its procedures for voting on bills and motions."*

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**Appendix 5**
**Annex I : Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region**

"1. The Chief Executive shall be elected by a broadly representative Election Committee in accordance with this Law and appointed by the Central People's Government.

2. The Election Committee shall be composed of 800 members from the following sectors:

<i>Industrial, commercial and financial sectors</i>	200
<i>The professions</i>	200
<i>Labour, social services, religious and other sectors</i>	200
<i>Members of the Legislative Council, representatives of district-based organizations, Hong Kong deputies to the National People's Congress, and representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference</i>	200

*The term of office of the Election Committee shall be five years.*

3. *The delimitation of the various sectors, the organizations in each sector eligible to return Election Committee members and the number of such members returned by each of these organizations shall be prescribed by an electoral law enacted by the Hong Kong Special Administrative Region in accordance with the principles of democracy and openness.*

*Corporate bodies in various sectors shall, on their own, elect members to the Election Committee, in accordance with the number of seats allocated and the election method as prescribed by the electoral law.*

*Members of the Election Committee shall vote in their individual capacities.*

4. *Candidates for the office of Chief Executive may be nominated jointly by not less than 100 members of the Election Committee. Each member may nominate only one candidate.*

5. *The Election Committee shall, on the basis of the list of nominees, elect the Chief Executive designate by secret ballot on a one-person-one-vote basis. The specific election method shall be prescribed by the electoral law.*

**Appendix 5 (cont'd)**

6. *The first Chief Executive shall be selected in accordance with the "Decision of the National People's Congress on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region".*

7. *If 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."*

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Research and Library Services Division  
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Tel: 2869 9593

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