

立法會

Legislative Council

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Note for the Bills Committee on Prevention of Bribery (Amendment) Bill 2007

Application of Article 53 of the Basic Law

At the meeting of the Bills Committee on 19 March 2008, there was a suggestion that when the Chief Executive (CE) becomes the subject of a corruption complaint, CE may consider to have his duties temporarily assumed by the specified principal officials in accordance with Article 53 of Basic Law.

2. The temporary assumption of duties by the specified principal officials under the Basic Law Article is predicated on the inability of the Chief Executive to discharge his duties for a short period.

3. The Article allows for a temporary arrangement to cater to the temporary loss of CE's ability to discharge his duties. The applicability of the Article to the situation where CE becomes the subject of a corruption complaint to facilitate his taking leave to enable investigation to be carried out into the complaint is questionable. Apart from the issue of whether there would be a genuine short term loss of the ability to discharge duties, the stand-in arrangement may only be too temporary to allow sufficient time for the investigation to be completed.

4. The applicability issue also appears to only arise when the complaint is known to the CE or to the public.

5. It is noted Article 52 of the Basic Law provides that if the CE loses the ability to discharge his duties as a result of serious illness or other reasons, he is required to resign. If there is a refusal to resign and there is dereliction of duty as a result, he may be impeached under Article 73(9).

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