

立法會

Legislative Council

LC Paper No. LS202/98-99

“By-election” to fill vacancy of the office of Chief Executive

In response to a question raised by a Member at the meeting of the Bills Committee on the Legislative Council (Amendment) Bill 1999 held on 31 May 1999, Legal Adviser had advised that because there was no express provisions in the Basic Law to provide for the need for and the conduct of a by-election to fill a vacancy which may arise during the term of office of the first Chief Executive in 2001, it was arguable that it would be for the Selection Committee established 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 to be responsible for the selection of the succeeding Chief Executive through a by-election to be held in accordance with the relevant electoral laws.

2. Legal Adviser has been able to consider the matter in more detail and is able to provide the following advice which supersedes the one given at the meeting. Under Article 4 of the Decision mentioned in paragraph 1 above, the term of office of the first Chief Executive is the same as the regular term, which is 5 years under Article 46 of the Basic Law (BL 46). Under BL 53(2), it is provided that “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”. BL 45(3) provides that “the specific method for selecting the Chief Executive is prescribed in Annex I” of the Basic Law shall be the method used for selecting the Chief Executive. In sum, should the office of Chief Executive become vacant today, the Election Committee provided for in Annex I of the Basic Law would have to be constituted and put into action in accordance with the details of the specific election method to be enacted into law in accordance with paragraphs 3 to 5 of the same Annex. Under BL 53 (2), the new Chief Executive must be selected within six months. The person selected as the new Chief Executive will be appointed by the Central People’s Government.

3. I hope that this note will put right the Legal Adviser’s advice provided at the meeting.

Prepared by
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