

立法會
Legislative Council

LC Paper No. CB(2)1766/04-05

(These minutes have been seen
by the Administration)

Ref : CB2/BC/6/04

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

**Minutes of the fifth meeting
held on Thursday, 28 April 2005 at 8:30 am
in Chamber of the Legislative Council Building**

Members present :

- Hon TAM Yiu-chung, GBS, JP (Chairman)
- Hon Howard YOUNG, SBS, JP (Deputy Chairman)
- Hon James TIEN Pei-chun, GBS, JP
- Hon Albert HO Chun-yan
- Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP
- Hon LEE Cheuk-yan
- Hon Martin LEE Chu-ming, SC, JP
- Hon Fred LI Wah-ming, JP
- Dr Hon LUI Ming-wah, JP
- Hon Margaret NG
- Hon CHEUNG Man-kwong
- Hon CHAN Yuen-han, JP
- Hon Bernard CHAN, JP
- Hon CHAN Kam-lam, JP
- Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
- Hon LEUNG Yiu-chung
- Hon SIN Chung-kai, JP
- Hon WONG Yung-kan, JP
- Hon Jasper TSANG Yok-sing, GBS, JP
- Hon LAU Kong-wah, JP
- Hon Miriam LAU Kin-ye, GBS, JP
- Hon CHOY So-yuk
- Hon Andrew CHENG Kar-foo
- Hon Abraham SHEK Lai-him, JP
- Hon LI Fung-ying, BBS, JP
- Hon Tommy CHEUNG Yu-yan, JP

Hon Albert CHAN Wai-yip
Hon Frederick FUNG Kin-kee, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon LI Kwok-ying, MH
Hon Daniel LAM Wai-keung, BBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon CHEUNG Hok-ming, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon Patrick LAU Sau-shing, SBS, JP
Hon Albert Jinghan CHENG
Hon KWONG Chi-kin

**Members
absent** : Dr Hon David LI Kwok-po, GBS, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon James TO Kun-sun
Dr Hon Philip WONG Yu-hong, GBS
Dr Hon YEUNG Sum
Hon LAU Wong-fat, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Vincent FANG Kang, JP
Dr Hon Joseph LEE Kok-long
Hon MA Lik, JP
Dr Hon KWOK Ka-ki
Dr Hon Fernando CHEUNG Chiu-hung
Hon CHIM Pui-chung
Hon TAM Heung-man

**Public Officers
attending** : Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

Mr Joseph LAI Yee-tak
Deputy Secretary for Constitutional Affairs

Mr Raymond TAM Chi-yuen
Principal Assistant Secretary for Constitutional Affairs

Mr James O'NEIL
Deputy Solicitor General (Constitutional)

Mr Gilbert MO
Deputy Law Draftsman (Bilingual Drafting &
Administration)

Clerk in attendance : Mrs Percy MA
Chief Council Secretary (2)3

Staff in attendance : Mr Jimmy MA
Legal Adviser

Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mrs Eleanor CHOW
Senior Council Secretary (2)4

Mrs Fanny TSANG
Legislative Assistant (2)3

Action

I. Confirmation of minutes of meeting

(LC Paper No. CB(2)1379/04-05 – Minutes of meeting on 14 April 2005)

The minutes of the meeting held on 14 April 2005 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(2)1391/04-05(01) – Letter to the Administration setting out the issues raised by members at the meeting on 25 April 2005

LC Paper No. CB(2)1373/04-05(01) – Article provided by Hon Margaret NG entitled "Closing Chapter in the Immigrant Children Saga : Substantive Legitimate Expectations and Administrative Justice in Hong Kong"

LC Paper No. CB(2)1391/04-05(02) – Administration's response to issues raised at the meeting on 25 April 2005

LC Paper No. CB(2)1407/04-05(01) – Text of the interpretation made by the Standing Committee of the National People's Congress on 27 April 2005 regarding Article 53(2) of the Basic Law

LC Paper No. CB(3)465/04-05 – The Bill

LC Paper No. CB(2)1268/04-05(02) – Marked-up copy of the Bill)

Action

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).
3. Members noted the text of the interpretation made by the Standing Committee of the National People's Congress on Article 53(2) of the Basic Law (BL) on 27 April 2005 (the Interpretation) which was provided by the Administration for tabling at the meeting (subsequently issued vide LC Paper No. CB(2)1407/04-05(01) on 28 April 2005 and gazetted as L.N. 61 of 2005 on 29 April 2005.)
4. The Administration was requested to provide a written response to –
 - (a) explain how it had arrived at the view that the provisions in the Bill were consistent with the Interpretation; and
 - (b) respond to the suggestion of the Legal Adviser that it might be necessary to consider the drafting and legal effect of the Bill (including its long title) in the light of the Interpretation, which referred to possible amendments to the method for selecting the Chief Executive after 2007 as prescribed in Annex I to BL, and the determination of the term of office of the new Chief Executive elected under BL 53(2) in accordance with an amended election method.

(Post-meeting note : The Administration's response was issued to members vide LC Paper CB(2) 1421/04-05(02)) on 29 April 2005.)

III. Any other business

5. The Chairman said that the next meeting would be held on the following day, 28 April 2005. The Bills Committee would proceed to clause-by-clause examination of the Bill at the next meeting. The Chairman urged members who intended to propose Committee Stage amendments to the Bill to advise the Bills Committee at the next meeting and if possible, to provide the wording of the amendment for the consideration of the Bills Committee. Members agreed that if the Bills Committee could not conclude its deliberation at the next meeting, it would continue discussion at the meeting on Saturday, 30 April 2005 from 9:00 am to 1:00 pm. Members raised no objection for the Bill to resume Second Reading debate at the Council meeting on 25 May 2005.
6. The meeting ended at 10:30 am.

Annex

Proceedings of the fifth meeting of the Bills Committee on Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill on Thursday, 28 April 2005 at 8:30 am in Chamber of the Legislative Council Building

Time Marker	Speaker(s)	Subject(s)	Action required
000000 - 000216	Chairman	Confirmation of minutes of meeting.	
000217 - 000817	Admin	<p>Introduction to the Administration's Paper (LC Paper No. CB(2)1391/04-05(02)).</p> <p>Interpretation made by the Standing Committee of the National People's Congress (NPCSC) on 27 April 2005 regarding Article 53(2) of the Basic Law (BL) (the Interpretation).</p>	
000818 - 002250	Chairman Ms Margaret NG Admin	<p>Purpose of the Interpretation.</p> <p>The need to form a new Election Committee (EC) to address the question of the lack of EC from 14 July 2005 to early 2007.</p> <p>Concern about the possibility of amending the term of office of CE in BL46 by way of amending the method for selecting CE after 2007 stipulated in Annex I to BL.</p> <p>Amendment to Annex I to BL and its implication on the "remainder of the term" requirement.</p> <p>Remarks made by Mr QIAO Xiaoyang, Deputy Secretary of NPCSC, on 12 April 2005 on how to determine the term of office of CE elected under BL53(2) after 2007.</p>	
002251 - 003435	Chairman Mr Albert HO Admin	<p>Purpose and legal status of the Interpretation, the main text of and annexes to BL</p> <p>Legal basis for amending the term of office CE in BL46 by way of amending Annex I to BL.</p> <p>The issue of whether a subsequent enactment prevailed over a previous one and the implication of amending Annex I to BL on the "remainder of the term" requirement after 2007.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
003436 - 004953	Chairman Mr LEE Cheuk-yan Admin	<p>Remarks made by Mr QIAO Xiaoyang on 12 April 2005.</p> <p>Application of the Bill before and after 2007 and the need to amend the Bill to reflect the view of Mr QIAO that the “remainder of the term” requirement would continue to apply after 2007 if the term of office of EC remained as five years.</p> <p>The need to form a new EC to address the question of the lack of EC from 14 July 2005 to early 2007.</p> <p>Interpretation made by NPCSC on 6 April 2004 regarding method for selecting CE in 2007.</p>	
004954 - 005904	Chairman Mr Martin LEE Admin	<p>Basis for introducing the Bill.</p> <p>Clarification on whether NPCSC should interpret BL46 instead of BL53(2).</p> <p>Administration’s intention to propose amendments to the Bill.</p> <p>The procedure for endorsement of an amendment to the method for selecting CE after 2007 (Article 7 of Annex I to BL).</p>	
005905 - 010620	Chairman Mr Albert CHAN Admin LA	<p>Legal basis for introducing the Bill.</p> <p>Application of the Bill before and after 2007.</p> <p>Consistency of the Bill with the Interpretation.</p>	
010621 - 011617	Chairman Mr TONG Ka-wah Admin	<p>The need for enacting the Bill in view of the Interpretation and the narrow application of the Bill, i.e. applicable only to the current vacancy of CE.</p> <p>The need for a comprehensive review of the Chief Executive Election Ordinance (CEEEO).</p> <p>Scenario of amending Annex I to the effect that the EC should dissolve after electing a CE and its effect on the “remainder of the term” requirement.</p>	
011618 - 012503	Chairman Mr LEE Wing-tat Admin	<p>Term of office of Members of the Executive Council (ExCo) in the event of a vacancy in the office of CE arising prematurely.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>Power of CE to appoint and remove ExCo Members.</p> <p>Perusal of historical records of the Basic Law Drafting Committee and the Basic Law Consultative Committee on discussions on the term of office of CE by the Secretary for Constitutional Affairs.</p>	
012504 - 013715	Chairman Ms Audrey EU Admin	<p>Request for the LegCo Secretariat to provide relevant historical records of the Basic Law Drafting Committee and the Basic Law Consultative Committee on discussions of BL46 regarding the term of office of CE.</p> <p>Preparation of a supplementary report to the Fourth Report of the Task Force on Constitutional Development (the Task Force) to incorporate the various issues previously raised by members of the Bills Committee for public consultation.</p> <p>Timetable for publishing the Fifth Report of the Task Force.</p> <p>Clarification on whether the remarks made by Mr QIAO Xiaoyang on 12 April 2005 were in accord with the legislative intent of BL.</p>	The Research and Library Services Division to take necessary follow-up action.
013716 - 014123	Chairman Mr LAU Kong-wah Admin	<p>Whether the “remainder of the term” requirement which was subject to change after 2007 was in accord with the legislative intent of BL.</p> <p>Other possible amendments to the electoral method in Annex I to BL.</p>	
014124 - 014516	Chairman Mr James TIEN Admin	The Administration to address issues relating to another vacancy in the office of CE arising prematurely before 30 June 2007 and the application of the Bill after 2007.	
014517 - 014748	Chairman Ms LI Fung-ying Admin	Introduction of amendments to CEEO to address the issues of the lack of EC from 14 July 2005 to early 2007, and arrangements for electing a new CE to fill a vacancy in the office of CE which arose shortly, say six to seven months, before the expiry of the second term CE on 30 June 2007.	
014749 - 014819	Chairman Mr LEUNG Kwok-hung	Date of next meeting.	

Time Marker	Speaker(s)	Subject(s)	Action required
014820 - 015024	Chairman Mr Albert CHAN	Request for the Administration to provide a written response to issues raised.	The Administration to respond to the issues raised (paragraph 3 of the minutes of the meeting refers).
015025 - 015058	Chairman Mr James TIEN	The need to hold a meeting on Saturday, 30 April 2005.	

Council Business Division 2
Legislative Council Secretariat
2 June 2005