

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

Follow up to meeting on 14 April 2005

- (a) *The Basic Law (BL) has made no express provision for the Chief Executive (CE) to request for an interpretation by the Standing Committee of the National People's Congress (NPCSC). How do BL 43 and 48 provide the basis for the Acting CE to make a report to the State Council to request the NPCSC to make an interpretation of BL 53(2) regarding the term of office of the new CE?*
1. Article 43 of the Basic Law provides that the Chief Executive shall be the head of the HKSAR and shall represent the Region. He shall be accountable to the Central People's Government and the HKSAR in accordance with the provisions of the Basic Law.
 2. Article 48(2) of the Basic Law provides that the Chief Executive shall be responsible for the implementation of the Basic Law and other laws which, in accordance with the Basic Law, apply in the HKSAR.
 3. Given that the Chief Executive has these constitutional powers and functions, it is lawful and constitutional for the Acting Chief Executive to make a report to the State Council and to recommend that the Standing Committee of the National People's Congress ("NPCSC") be requested to make an interpretation of the relevant provision(s) of the Basic Law if the Acting Chief Executive considers that such an interpretation is necessary for the effective implementation of the Basic Law.
 4. In the NPCSC Interpretation of 26 June 1999, it was noted in the preamble that the State Council's motion regarding the request for the relevant interpretation was submitted upon the Chief Executive's report furnished under Article 43 and Article 48(2) of the Basic Law. The Chief Executive's power and function to submit a report to the State Council under these articles of the Basic Law and to recommend that the NPCSC be requested to make an interpretation was endorsed by the NPCSC.

(b) *What arrangements are in place to address the question of the vacuum of the Election Committee (EC) during the period from 13 July 2005 to early 2007? Whether a new EC may be constituted between the expiry of the term of the current EC and July 2007 and if so, whether it should be so constituted so that it may perform if necessary on or after such expiry the function of electing a new CE to fill any vacancy?*

5. The term of the current Election Committee will expire on 13 July 2005, and the election for a new Chief Executive will be held on 10 July (Sunday). Thus, the new Chief Executive should be elected by the current Election Committee.
6. When the Chief Executive Election Ordinance was enacted in 2001, it was anticipated that a gap would arise upon the expiry of its term. It was also envisaged that after the intervening period had passed, the term of the Chief Executive and that of the Election Committee would be more synchronized in future.
7. The position of the SAR Government is that we will not form a new Election Committee lightly as this may affect the review of the method for selecting the Chief Executive in 2007. In the event of another vacancy arising before 1 July 2007, the SAR Government will act in accordance with the Basic Law and the Chief Executive Election Ordinance.

(c) *In the light of Hon Ronny TONG's view, the Administration is requested to improve the drafting of proposed section 3(1A)(b) to remove any ambiguity about the expiry of the term of office having to depend on some definite terms of appointment.*

8. Regarding the drafting of the bill, the Administration will examine the clause in the light of the comments made by the Honourable Member to see whether an ambiguity arises and, if so, how the wording should be revised to avoid any ambiguity. The Administration will be ready to discuss the technical drafting issues in detail when the clause by clause examination commences.

(d) To ensure that the meaning of "term" in the Bill is consistent with that in the BL, the Administration should clarify whether the meaning of "term" in BL50 and BL55 includes part of a term served by a CE elected to fill a vacancy in the office of the CE arising before the expiry of the normal five-year term.

9. 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. We hope that the proposed NPCSC Interpretation will make the position clear beyond doubt.
10. Regarding Article 50 of the Basic Law, we note that the preceding Chief Executive has not dissolved the Legislative Council under this Article. Thus, Article 50 should not be an issue during the period 2002 to 2007. 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.
11. Regarding Article 55 of the Basic Law, the Acting Chief Executive has already invited all serving Executive Council Members to stay on and they have all agreed to do so. Therefore, the constitutionality of the present Executive Council is not in doubt.

(e) The Administration should explain whether a by-election will be held to fill a vacancy in the office of CE which arises within six months before the expiry of the original term of office.

12. Article 53(2) of the Basic Law requires 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 Article 45 of the Basic Law.
13. If a vacancy arises within six months before the expiry of the term of the office of the Chief Executive whose office has become vacant, arrangements would already be in hand for the next Chief Executive election with a view to holding the election before the end of that term in time for the person elected to be appointed and start a new term of office.