

立法會
Legislative Council

LC Paper No. CB(2)1450/04-05

Ref : CB2/BC/6/04

Paper for the House Committee meeting on 6 May 2005

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

PURPOSE

This paper reports on the deliberations of the Bills Committee on Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill.

BACKGROUND

2. On 10 March 2005, Mr TUNG Chee-hwa tendered to the Central People's Government (CPG) his resignation from the office of the Chief Executive.
3. On 12 March 2005, a press conference was held by the Acting Chief Executive to announce the approval of Mr TUNG's resignation by the CPG earlier on that day (G.N.(E.) 10 of 2005). The Acting Chief Executive also announced that in accordance with section 10(2) of the Chief Executive Election Ordinance (CEEO), the election of a new Chief Executive would be conducted on 10 July 2005. On the basis of the advice of the Secretary for Justice which was accepted by the Executive Council, the new Chief Executive would serve a term of two years to complete Mr TUNG's term of office. At the same press conference, the Secretary for Justice announced that after thorough study and deliberation, the Government had adjusted its understanding of the provisions of the Basic Law (BL), and came to the view that the term of office of a Chief Executive elected under BL 53 was not five years but the remainder of the term of the preceding Chief Executive.
4. On 6 April 2005, the Chief Secretary for Administration made a statement at the Council to inform Members of the Government's decision to submit a report to the State Council proposing that a request be made to the Standing Committee of the National People's Congress (NPCSC) to interpret BL 53(2) concerning the term of office of the new Chief Executive.

THE BILL

5. The Bill, which was introduced into the Legislative Council (LegCo) on 6 April 2005, seeks to amend section 3 of CEEO to provide that a Chief Executive who fills a vacancy that arises under section 4(b) or (c) of CEEO shall serve the remainder of the term of his predecessor.

6. Section 4 of CEEO reads as follows –

“4. Vacancy in office

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.”

THE BILLS COMMITTEE

7. At the House Committee meeting on 8 April 2005, Members formed a Bills Committee to study the Bill. The Bills Committee comprises 58 members and Hon TAM Yiu-chung and Hon Howard YOUNG were elected Chairman and Deputy Chairman of the Bills Committee respectively. The membership list of the Bills Committee is in **Appendix I**.

8. The Bills Committee has held six meetings with the Administration. It has also met with and received views from 18 organizations and individuals, the names of which are in **Appendix II**.

DELIBERATIONS OF THE BILLS COMMITTEE

Consideration of the Bill

Scope and legal basis of the Bill

9. The Administration has advised the Bills Committee that the scope of the Bill is very narrow and only deals with the term of office of a Chief Executive elected pursuant to BL 53(2). While the Bills Committee can discuss other related issues, any amendment to the Bill must be subject to the provisions of Rule 57(4) of the Rules of Procedure of LegCo.

10. Some members have queried the legal basis for the Administration to introduce the Bill, prior to an interpretation made by the NPCSC on the relevant provisions of the Basic Law on the term of office of the new Chief Executive.

11. The Administration has advised that there is clear legal basis for the Bill. The Government's position on the term of office of the Chief Executive elected under BL 53(2) is arrived at after careful and thorough examination by the Secretary for Justice. The Secretary for Justice has already explained the basis of her opinion to Members on various occasions, and has also provided for Members' reference nine documents upon which she has relied in arriving at her opinion on the term of office of the new Chief Executive. These documents include the background material on the drafting of BL 53 and three letters from Professor XU Chongde, a former Basic Law drafter, and Professor LIAN Xisheng, a renowned expert in constitutional law in the Mainland, both of whom participated in the drafting of the Basic Law. The position of the Government is also supported by the Legislative Affairs Commission of the NPCSC (LAC), a working organ of the National People's Congress responsible for matters relating to the Basic Law, in the form of a statement issued by the LAC on 12 March 2005.

12. Some members have asked the Administration to advise whether the Central Authorities had been consulted on the Government's original view on the term of office of the new Chief Executive in 2001 and 2004, and why the NPCSC did not exercise its power under BL 17 to return the CEEO enacted in 2001 on the ground that section 3(1) is inconsistent with BL 46.

13. The Administration has advised that the Central Authorities were not consulted on the Government's original view on the appointment term of the new Chief Executive elected to fill an unexpected vacancy. As section 3(1) of CEEO merely reiterates what is stated in BL 46, there was no reason for the NPCSC to return the Ordinance as being inconsistent with BL 46.

Meaning of the word "term"

14. Section 3(2) of CEEO stipulates that no person shall hold the office of the Chief Executive for more than two consecutive terms. With the new concept of the remainder of the term of office of the preceding Chief Executive introduced under proposed section 3(1A) in clause 2 of the Bill, members have requested the Administration to make it clear whether the meaning of the word "term" in section 3(2) includes part of a term, such as the remainder of the term of a Chief Executive who leaves office prematurely as provided under proposed section 3(1A) in clause 2 of the Bill. Members consider it important and necessary to clarify whether the new Chief Executive elected on 10 July 2005 may serve a maximum of seven years (i.e. the remainder of Mr TUNG's term plus a five-year term), or 12 years (i.e. the remainder of Mr TUNG's term plus two consecutive five-year terms). Moreover, potential candidates standing for the election in July 2005 are entitled to know the maximum number of years they can serve as the Chief Executive if elected.

15. The Administration agrees that the issue raised is important but not an urgent one that needs to be dealt with through the Bill. In accordance with the Basic Law and CEEO, the new Chief Executive elected on 10 July 2005 may seek re-election as the third term Chief Executive in 2007 if he so decides. The Administration has undertaken to examine the issue carefully and thoroughly, and make known its findings in due course. It may, as and where appropriate, seek views from legal experts in the Mainland and Hong Kong, and listen to views from the community.

16. Members have also requested the Administration to clarify whether the meaning of the word “term” in BL 50, which stipulates that the Chief Executive may dissolve LegCo only once in each term of his office, includes part of a term served by a Chief Executive elected to fill a vacancy in the office of the Chief Executive arising before the expiry of the normal five-year term.

17. The Administration has advised members that as the preceding Chief Executive has not dissolved LegCo under BL 50, BL 50 should not be an issue during the period from 2002 to 2007. The Administration considers that although the issue is important, it does not need to be addressed in the context of the current Bill.

Effect of the Bill on other provisions of CEEO

18. Some members have pointed out that the Bill will have implications on the operation of other provisions of CEEO. They have requested the Administration to review all relevant provisions of CEEO with a view to introducing the necessary consequential amendments to CEEO in the context of the current Bill.

19. The Administration has explained that the sole purpose of the Bill is to provide that the term of office of a Chief Executive who fills a vacancy that arises otherwise than due to expiry of term of office shall last until such expiry. In general, consequential amendments are made to ensure legal consistency between new legislative provisions and existing legislative provisions. Insofar as the Bill is concerned, the Administration does not consider that consequential amendments are required, since there is no legal inconsistency between the provisions in the Bill and the provisions in CEEO and other legislation.

20. Some members disagree with the Administrations’ view. They consider that the amendment proposed in the Bill will create anomalous consequences, or produce irrational or illogical results. These members have raised the following queries –

- (a) whether the requirement that an election be held to fill every vacancy without exception under section 6 of CEEO will be affected in that, where the proposed section 3(1A) is applicable, the remainder of the term may be too short for the holding of an election to be practicable;

- (b) whether the requirement in section 11(3)(b) of CEEO will be similarly affected where the remainder of the original term is too short to allow a further polling;
- (c) whether a vacancy occurs in the office of the Chief Executive, say 200 days before the expiry of the five-year term, would give rise to the anomalous consequences that two elections would be required to be held under section 10 of CEEO within a short span of 15 days, i.e. one to return a Chief Executive for appointment to fill the vacancy under the proposed section 3(1A), and another to fill the vacancy upon the expiry of the term of office of the Chief Executive under section 4(a) of CEEO; and
- (d) whether a legal challenge mounted against the election result of an election to return a Chief Executive elected to fill a vacancy under the proposed section 3(1A) at the end of the 30 day period allowed under section 39 of CEEO could be rendered futile, even if successful, if the remainder of the original term is too short and by the time a determination is made, the Chief Executive elected would have already served almost the whole of the remaining term of the preceding Chief Executive.

21. The Administration accepts that there is a need to clarify the situation referred to in paragraph 20(a) and (b) above. The Administration, however, considers that the issues raised are not urgent and need not be addressed in the context of the Bill. If necessary, the Administration may deal with them in the context of the current review of constitutional development when it considers possible amendments to the method for selecting the Chief Executive in 2007.

22. As for the scenario described in paragraph 20(c) above, the Administration has advised that it will hold the elections in accordance with the Basic Law, CEEO and other relevant enactment. In the view of the Administration, there is no anomalous consequence or legal inconsistency.

23. As regards the scenario described in paragraph 20(d) above, the Administration has advised that it will be for the courts to decide whether to grant leave for the proceedings (if leave has to be sought), and the time necessary to complete all relevant judicial proceedings.

24. Hon Margaret NG has criticised the Administration for not responding to the specific issues raised by members. She considers that the effect of the Bill on CEEO is not a matter that can be left for future consideration. It has to be addressed before the Bill can be passed by LegCo. Otherwise, LegCo will be passing a piece of legislation without being fully aware of its meaning and legal effect. She has indicated that Members belonging to the Article 45 Concern Group consider that the Bill, as presently drafted, is not ready for resumption of Second Reading debate.

Proposed section 3(1A)(b) in clause 2

25. Hon TONG Ka-wah considers that the law must be clear and unambiguous, and that proposed section 3(1A)(b) does not reflect clearly the policy intention that the new Chief Executive elected should fill the remaining term of the preceding Chief Executive. Given the existing construction of this proposed section, the term of office of the new Chief Executive would have to depend on some definite terms of appointment to be specified by the CPG. He has requested the Administration to consider improving the drafting of the section to remove any ambiguity.

26. The Administration has explained that under the proposed section, where a vacancy arises in the office of the Chief Executive under section 4(b) or (c) during the term of office of a Chief Executive, a by-election will be held to elect a candidate to fill the vacancy. The Chief Executive elected shall then be appointed by the CPG in accordance with the Basic Law as the new Chief Executive to fill the vacancy until the expiry of the term of office of the preceding Chief Executive. The Administration has further explained that from the drafting aspect, it is undesirable to use the “remainder of the term” in the Bill as the duration of the remainder of the term will be difficult to define, e.g. the new Chief Executive to be elected on 10 July 2005 will not be serving the whole of the remaining term of Mr TUNG Chee-hwa. The three elements in the amendment bill will define how the term of the new Chief Executive is to be set : a vacancy arising, appointment by CPG and expiry of the term of office.

Basis for the Chief Executive to request for an interpretation by the NPCSC

27. Members have requested the Administration to explain the basis for the Acting Chief Executive to make a request for an interpretation of BL 53(2) regarding the term of office of the new Chief Executive, given that there is no express provision in the Basic Law for the Chief Executive to request the NPCSC to make an interpretation.

28. Hon Margaret NG has pointed out that some academics have questioned the legality and constitutionality of the Government’s action to request for an interpretation by the NPCSC. She has provided for reference of the Bills Committee the following articles –

- (a) “The Rule of Law in Hong Kong: Immigrant Children, the Court of Final Appeal and the Standing Committee of the National People’s Congress” written by Mark Elliott and Christopher Forsyth and published in *Asia Pacific Law Review* (2000); and
- (b) “Closing Chapter in the Immigrant Children Saga : Substantive Legitimate Expectations and Administrative Justice in Hong Kong” written by Christopher Forsyth and Rebecca Williams and published in *Asia Pacific Law Review* (2002).

Ms NG has requested the Administration to give a response to the views of the authors.

29. The Administration considers that it is clear from the Basic Law that the power of interpretation of the Basic Law is vested in the NPCSC. At the same time, the Court of Final Appeal holds the power of final adjudication over court cases arising in Hong Kong. There is no contradiction between the two. Any view that the NPCSC can only give an interpretation in the course of the Hong Kong Special Administrative Region (HKSAR) legal proceedings must be rejected in the light of the Court of Final Appeal's decisions in the cases of *Lau Kong Yong* and *Chong Fung Yuen*. The NPCSC's power of interpretation extends to every provision in the Basic Law and is not limited to the "excluded provisions", i.e. Basic Law provisions concerning affairs which are the responsibility of the CPG, or covering the relationship between the Central Authorities and the HKSAR referred to in BL 158(3). Apart from the circumstances provided for in BL 158(3), an NPCSC interpretation can be made other than in the course of the HKSAR legal proceedings.

30. The Administration has explained that BL 43 provides that the Chief Executive shall be the head of the HKSAR and shall represent the Region. He shall be accountable to the CPG and the HKSAR in accordance with the provisions of the Basic Law. BL 48(2) 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. 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 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.

31. The Administration has further explained that 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 BL 43 and BL 48(2). 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 were endorsed by the NPCSC.

32. Hon Emily LAU considers that the Administration's response was unacceptable, and that the Government has not followed the proper procedure for seeking an NPCSC interpretation. While there is an express provision in BL 158(3) for a judicial request for an NPCSC interpretation, the HKSARG has chosen to ignore it. While BL 158 has no express provision for the Chief Executive to request for an NPCSC interpretation, the Acting Chief Executive has made such a request. Ms LAU is of the view that if it is considered necessary for the Chief Executive to have a role under BL 158, it should be amended to that effect after thorough consultation and deliberation.

33. The Administration has explained that the reference to a judicial request in BL 158(3) must be understood in its context. BL 158(1) states that the power of interpretation of the Basic Law shall be vested in the NPCSC. In BL 158(2), the NPCSC authorizes the HKSAR courts to interpret on their own, in adjudicating cases, the provisions of the Basic Law which are within the limits of the autonomy of the Region. BL 158(3) authorizes the HKSAR courts to interpret other provisions of the Basic Law in adjudicating cases, but then imposes a duty to seek an NPCSC interpretation in certain situations. It is clear, therefore, that the purpose of the express provision concerning a judicial request for an NPCSC interpretation is to impose a limitation on the power of HKSAR courts to interpret the Basic Law. The Chief Executive has no similar power to interpret the Basic Law that is subject to a similar duty to seek an NPCSC interpretation in specified circumstances. On the contrary, the powers vested in the Chief Executive under BL 43 and 48(2) are not subject to any express limitation in that respect.

34. Ms LAU has expressed concern whether the Chief Executive has unfettered power to request the NPCSC to give an interpretation of the provisions of the Basic Law whenever he is of the opinion that such an interpretation is necessary, in the absence of an express provision in BL 158 empowering him to do so. She has requested the Legal Adviser of LegCo to give his view.

35. The Legal Adviser has responded that no power given by law can be an unfettered power. Powers conferred by law have to be exercised by the party empowered to do so by considering all the relevant factors, and adopting a reasonable and proportional approach. According to the Administration, the Chief Executive not only has the power but also a duty to implement the Basic Law. It requires a judgement on the part of the Chief Executive to decide whether in exercising his powers and functions, there is a need for him to seek an interpretation by the NPCSC. The Legal Adviser has pointed out that BL 158 stipulates the bodies which have the power to interpret the Basic Law. However, the issue under discussion is the mechanism for triggering off the process of interpretation by the NPCSC. In his view, these are two separate legal issues.

36. The Administration has reiterated that it is always the position of the Government that only under very exceptional circumstances would it consider making a request for interpretation. The Chief Executive has a constitutional duty to implement the Basic Law. If, in the process, he comes across exceptional difficulties, he has a responsibility to report to the CPG. The whole process of interpretation is conducted in accordance with the Constitution and the Basic Law.

Interpretation made by the NPCSC on 27 April 2005

37. The interpretation of BL 53(2) was made by the NPCSC on 27 April 2005 (the Interpretation). The last paragraph of the Interpretation stipulates, inter alia, that –

“prior to the year 2007 when the Chief Executive is selected by the Election Committee with a five-year term of office, in the event that the office of the Chief Executive becomes vacant as he (she) fails to serve the full term of office of five years as prescribed by Article 46 of the Basic Law, the term of office of the new Chief Executive shall be the remainder of the previous Chief Executive; and that after 2007, the above-mentioned method for selecting the Chief Executives could be amended, and should the office of the Chief Executive then become vacant, the term of office of the new Chief Executive shall be determined in accordance with the amended method for the selection of the Chief Executive.”

38. Hon Martin LEE has questioned why the NPCSC made an interpretation of BL 53(2), and not BL 46, as the issue in dispute is the term of office of the Chief Executive which is prescribed in BL 46.

39. The Administration has explained that in considering the term of office of the new Chief Executive, one has to look at the relevant provisions of the Basic Law, and not BL 46 alone. BL 46 refers to the normal term of office of the Chief Executive which is five years. The Interpretation has made reference to BL 45, BL 46, BL 53 and Annex I. The issue dealt with in the Interpretation is the term of office of the Chief Executive returned in an election to fill a vacancy arising before the expiry of the normal five-year term under BL 53(2).

40. Some members have pointed out that according to the Interpretation, the term of office of a Chief Executive elected pursuant to BL 53(2) after 2007 shall be determined by the amended method for selecting the Chief Executive. The method for selecting the Chief Executive prescribed in Annex I also covers the term of office of the Election Committee. Under the design of the election system of the Chief Executive, the term of office of the Election Committee is to be the same length as that of the Chief Executive i.e. both have a five-year term. These members have expressed concern whether any amendment to the term of office of the Election Committee in Annex I would have the effect of amending the term of office of the Chief Executive under BL 46. They question the appropriateness of amending BL 46 by way of amending Annex I, given that the procedure for amending Annex I is much easier than that for amending the main text of the Basic Law. They consider that the proper procedure to effect any amendments to the term of office of the Chief Executive is to amend BL 46.

41. The Administration has explained that the Annexes are an integral part of the Basic Law and have the same legal status as that of the main text of the Basic Law. Any amendments to Annex I must be consistent with the provisions in the main text of the Basic Law. As regards the term of office of the new Chief Executive elected pursuant to BL 53(2), the provisions of BL 53, BL 45 and Annex I are all relevant.

Consistency of the Bill with the Interpretation

42. Some members have pointed out that the Secretary for Justice has advised Members that the legislative intent of the relevant provisions of the Basic Law is that the term of office of a Chief Executive elected pursuant to BL 53(2) should be the remainder of the term of the preceding Chief Executive, having analysed all relevant factors according to common law principles and after taking into account the views of Mainland experts such as Professor XU Chongde and Professor LIAN Xisheng. It is on this basis that the Government has changed its stance on the term of office of the new Chief Executive. However, according to the Interpretation, the requirement that the Chief Executive elected to fill a vacancy under BL 53(2) should serve the remainder of the term of his predecessor will only apply prior to 2007. As for the arrangement after 2007, the Interpretation has linked the term of office of the Chief Executive elected under BL 53(2) with the method for selecting the Chief Executive after 2007, in that the term of office shall be determined in accordance with the amended method of selecting the Chief Executive. The Interpretation does not say whether the “remainder of the term” requirement will continue to apply if the election method is not amended. It would appear that the Interpretation is not in accord with the original legislative intent as understood by the two Mainland experts, which has been accepted by the Government and reflected in the Bill.

43. The Administration has advised that the legislative intent of the relevant provisions of the Basic Law on the term of office of the new Chief Executive is very clear. Under the existing electoral arrangements for the Chief Executive election which is underpinned by an Election Committee which has a five-year term, the term of office of a Chief Executive elected pursuant to BL 53(2) should be the remaining term of the preceding Chief Executive. Annex I to the Basic Law provides for the possibility of amendments to the method for selecting the Chief Executives for the terms subsequent to 2007. According to the Interpretation, the “remainder of the term” requirement will continue to be in effect unless and until amendments are made to the method for selecting the Chief Executive specified in Annex I to the Basic Law. This is also consistent with paragraph 4 of the interpretation made by the NPCSC on 6 April 2004, which stipulates, inter alia, that if no amendment is made to the method for selecting the Chief Executive after 2007, the provisions relating to the method for selecting the Chief Executive specified in Annex I will still be applicable.

44. The Administration has also explained that as set out in the Bill’s long title, the purpose of the Bill is to provide that the term of office of a Chief Executive who fills a vacancy in the office of the Chief Executive that arises otherwise than due to expiry of the term of office shall last until such expiry. Clause 2 of the Bill gives effect to this purpose. The Administration considers that the Bill is fully consistent with the Interpretation.

45. Some members consider that the Bill exceeds the scope of the Interpretation, because the Interpretation has made reference to the term of office of a new Chief Executive elected pursuant to BL 53(2) prior to 2007 and after 2007, but the present

formulation of the Bill has not reflected such a time frame. Some other members consider that the Bill is acceptable, as there is scope for CEEO to be further amended to incorporate any subsequent changes to the term of office of a Chief Executive elected under BL 53(2), if the method for selecting the Chief Executive after 2007 is amended.

46. The Legal Adviser has advised that the Bill is declaratory in nature and should accurately reflect the legal effect of the relevant provisions of the Basic Law which includes BL 53(2) as interpreted by the NPCSC on 27 April 2005. It may be necessary to reconsider the drafting and legal effect of the Bill (including its long title) in the light of the Interpretation, which refers to possible amendments to the method for selecting the Chief Executive after 2007 as prescribed in Annex I, and the determination of the term of office of the Chief Executive elected under BL 53(2) in accordance with an amended election method.

47. The Bills Committee has discussed some suggested amendments to the Bill for the purpose of making it clear that the term of office of the Chief Executive elected under BL 53(2) after 2007 has to be determined in accordance with the amended method for selecting the Chief Executive. The Administration does not consider any amendments necessary. The Administration has explained that at this stage, it is in no position to know if the method for selecting the Chief Executive after 2007 will or will not be amended, and even if amended, whether it will involve changing the method for selecting the Chief Executive by the Election Committee which has a five-year term of office. For example, if the third term Chief Executive is proposed to be elected by an Election Committee which has more members and has a broadened electoral base but this Election Committee will retain a five-year term of office, the “remainder of the term” requirement stipulated in the Bill will still apply. Having considered the Administration’s views, the Bills Committee agrees not to further pursue the suggested amendments.

48. Hon Martin LEE has enquired whether the Central Authorities are aware of the content of the Bill, and, if so, their comments on the Bill.

49. The Administration has advised that in submitting the report to the State Council concerning the request to the NPCSC for an interpretation of BL 53(2) on 6 April 2005, the Acting Chief Executive had also submitted the views received from different sectors of the community on the term of office of the Chief Executive, and a copy of the Bill. Before and after the interpretation made by the NPCSC on 27 April 2005, the Administration has not received from the relevant departments of the Central Authorities any comments on the Bill or any comments that the Bill is inconsistent with the Interpretation.

Enactment of the Bill and follow-up on issues raised by members

50. Some members have questioned the need and urgency for the Bill to be passed by LegCo at this stage, as the Interpretation made by the NPCSC on 27 April 2005

will now provide a legal and constitutional basis for the term of office of the new Chief Executive to be elected on 10 July 2005. They have suggested that the Administration should introduce all amendments relating to the election of the Chief Executive, including amendments to give effect to the new election method for the third term Chief Executive, if any, and amendments to address the various issues raised by members during the deliberation of the current Bill, in one package.

51. Some other members, however, consider that there is a need to enact the Bill to give a clear legal basis to the appointment term of the new Chief Executive in local legislation.

52. The Administration has advised that section 3 of CEEO provides that the term of office of the Chief Executive shall be 5 years. It does not stipulate whether the term of a Chief Executive who assumes office because his predecessor vacates office before the expiration of his term is still 5 years. It is necessary for amendments to be made to CEEO to explicitly provide that when the office of the Chief Executive has become vacant under section 4(b) or 4(c) of the CEEO, the term of office of the new Chief Executive elected shall be the remainder of the term of the preceding Chief Executive. The Bill will give a clear legal basis for the term of the new Chief Executive, and it will reflect fully the legislative intent of the Basic Law and the Interpretation.

53. The Administration has also advised that it will address separately the various issues raised by members of the Bills Committee. As regards members' concern about the consequences resulting from the "remainder of the term" requirement, and the circumstances under which a by-election should or should not be held, the Administration has drawn members' attention to a speech made by Mr QIAO Xiaoyang, Deputy Secretary of the NPCSC, on 12 April 2005. Mr QIAO is of the view that the term of office of the Chief Executive elected pursuant to BL 53(2) after 2007 should be determined in accordance with the amended election method. If the term of office of the Election Committee remains to be five years, the term of office of the new Chief Executive elected shall be the remainder of the term of the preceding Chief Executive. If the Election Committee has no specific term of office or if the Chief Executive is elected by universal suffrage, the term of office of the Chief Executive should still be five years. In the view of the Administration, if it is decided after 2007 that the Election Committee should dissolve once it has elected a Chief Executive, then in the event of a vacancy in the office of the Chief Executive arising prematurely, a new Election Committee will be formed to elect a new Chief Executive. In the circumstances, the "remainder of the term" requirement may no longer be applicable.

54. In response to members' enquiry on the timetable for reverting to LegCo on the relevant issues raised, the Administration has advised that it will address the issues in the Fifth Report to be issued by the Constitutional Development Task Force. Under the Basic Law, any amendment to the method of electing the Chief Executive will need the consent of the Chief Executive. The new Chief Executive to be elected

on 10 July 2005 will be consulted before publishing the Fifth Report of the Constitutional Development Task Force. The Administration will endeavour to publish the Fifth Report in the latter half of this year, and complete all necessary legislative work before the election of the third term Chief Executive in 2007.

Other issues

Election Committee

55. Annex I to the Basic Law stipulates that the term of office of the Election Committee shall be five years. Section 9 of CEEO stipulates that the term of office of the Election Committee shall be five years commencing on the date on which it is constituted. As the current Election Committee was constituted on 14 July 2000, its term will expire on 13 July 2005.

56. Some members have requested the Administration to explain the arrangements that are in place to address the issue that there will be no Election Committee during the period from 14 July 2005 to early 2007. These members have asked whether a new Election Committee may be constituted between the expiry of the term of the current Election Committee 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 Chief Executive to fill any vacancy.

57. Hon LEE Wing-tat has requested the Administration to give a specific response to the view of a Mainland legal expert that the term of the current Election Committee may be extended beyond expiry of its term of office on 13 July 2005.

58. The Administration has advised the Bills Committee that the most immediate and important task is to make arrangements for the election of a new Chief Executive on 10 July 2005, and that the new Chief Executive should be elected by the current Election Committee. When CEEO was enacted in 2001, it was anticipated that a gap would arise upon the expiry of the term of office of the Election Committee. 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 synchronised in future. The position of the Government is that it will not form a new Election Committee lightly, as this may affect the current review on the method for selecting the Chief Executive in 2007, e.g. possible changes to the composition of the Election Committee. In the event of another vacancy arising before 1 July 2007, the Government will act in accordance with the Basic Law and CEEO. If necessary, it may consider forming an Election Committee, but the possible implications to the review of the method for selecting the Chief Executive in 2007 must be carefully considered.

Term of office of Principal Officials and Executive Council Members

59. Members have sought clarification from the Administration about the term of office of the Principal Officials and Executive Council (ExCo) Members appointed before the resignation of Mr TUNG Chee-hwa.

60. The Administration has responded that under BL 48(5), the Chief Executive shall nominate and report to the CPG the appointment and removal of Principal Officials. BL 55 stipulates that the term of office of ExCo Members shall not extend beyond the expiry of the term of office of the Chief Executive who appoints them. The Acting Chief Executive has all the powers and functions of the Chief Executive. As the Acting Chief Executive has already invited all serving ExCo Members to stay on until the new Chief Executive is elected and appointed and they have all agreed to do so, the constitutionality of the present ExCo is not in doubt. Under the Basic Law, it is for the new Chief Executive to decide on appointment and removal of Principal Officials and ExCo Members after he assumes office.

Subscribers and polling arrangements

61. Paragraph 4 of Annex I to the Basic Law provides that candidates for the office of the Chief Executive may be nominated jointly by not less than 100 members of the Election Committee. Paragraph 5 provides that the Election Committee shall elect the Chief Executive by secret ballot on a one-person-one-vote basis. The specific method shall be prescribed by the electoral law. Under section 24 of CEEO, a poll shall be conducted where there are two or more candidates in an election.

62. Hon Emily LAU has suggested that the opportunity be taken to introduce amendments to CEEO to cap the number of subscribers required for nominating candidates for the office of the Chief Executive, so that more potential candidates could contest in the election, and also to require a poll be conducted in an uncontested election.

63. The Administration has advised that given the scope of the Bill, other issues relating to the election of the Chief Executive, such as the requirement for a winning candidate to declare he is not a member of any political party and the two issues raised by Ms LAU, could be considered in the context of the current review of constitutional development relating to the method for selecting the Chief Executive in 2007.

DATE OF RESUMPTION OF SECOND READING DEBATE

64. The Administration will give notice to resume the Second Reading debate on the Bill at the Council meeting on 25 May 2005.

ADVICE SOUGHT

65. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 2
Legislative Council Secretariat
5 May 2005

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

Membership list

Chairman	Hon TAM Yiu-chung, GBS, JP
Deputy Chairman	Hon Howard YOUNG, SBS, JP
Members	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 Dr Hon David LI Kwok-po, GBS, JP Hon Fred LI Wah-ming, JP Dr Hon LUI Ming-wah, JP Hon Margaret NG Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP Hon James TO Kun-sun 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 Dr Hon Philip WONG Yu-hong, GBS Hon WONG Yung-kan, JP Hon Jasper TSANG Yok-sing, GBS, JP Dr Hon YEUNG Sum Hon LAU Kong-wah, JP Hon LAU Wong-fat, GBS, JP Hon Miriam LAU Kin-ye, GBS, JP Hon Emily LAU Wai-hing, JP Hon CHOY So-yuk Hon Andrew CHENG Kar-foo Hon Timothy FOK Tsun-ting, GBS, JP 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 Vincent FANG Kang, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon LI Kwok-ying, MH
Dr Hon Joseph LEE Kok-long
Hon Daniel LAM Wai-keung, BBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon MA Lik, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Dr Hon KWOK Ka-ki
Dr Hon Fernando CHEUNG Chiu-hung
Hon CHEUNG Hok-ming, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Patrick LAU Sau-shing, SBS, JP
Hon Albert Jinghan CHENG
Hon KWONG Chi-kin
Hon TAM Heung-man

(Total : 58 Members)

Clerk	Mrs Percy MA
Legal Adviser	Mr Jimmy MA Mr Arthur CHEUNG
Date	14 April 2005

《行政長官選舉(修訂)(行政長官的任期)條例草案》委員會
Bills Committee on Chief Executive Election (Amendment)
(Term of Office of the Chief Executive) Bill

曾向委員會表達意見的團體/個別人士名單
List of organizations/individuals who have
submitted views to the Bills Committee

<u>團體名稱</u>	<u>Name of organisation</u>
* 1. 九龍社團聯會	Kowloon Federation of Associations
* 2. 九龍婦女聯會	Kowloon Women's Organisations Federation
* 3. 民主建港聯盟	Democratic Alliance for Betterment of Hong Kong
* 4. 民主黨	The Democratic Party
* 5. 沙田青年協會	Sha Tin Youth Association
* 6. 青進國是學會	YUA Current Affairs Society
* 7. 香港大學學生會	Hong Kong University Students' Union
* 8. 香港中華總商會聯絡委員會	Liaison Sub-committee, the Chinese General Chamber of Commerce
9. 香港青年協進會	Hong Kong Youths Unified Association
* 10. 香港青年會	Hong Kong Youth Association
* 11. 香港專上學生聯會	Hong Kong Federation of Students
* 12. 香港理工大學學生會	The Hong Kong Polytechnic University Students' Union
* 13. 香港樹仁學院學生會	The Student Union of the Hong Kong Shue Yan College
* 14. 港九新界販商社團聯合會	Federation of Hong Kong Kowloon New Territories Hawker Associations

- * 15. 新世紀協會有限公司 New Century Society Ltd
- * 16. 新界社團聯會 New Territories Association of Societies
- * 17. 蘇屋邨居民協會 Hong Kong Federation of Students

個別人士

Individual

- 1. 鄭來興先生 Mr KWONG Loi-hing
 荃灣區議會議員 Tsuen Wan District Councilor

- * 曾向小組委員會口頭申述意見的團體/個別人士
Organisations/individuals who have made oral representations to the Bills Committee