

LEGISLATIVE COUNCIL BRIEF

Chief Executive Election Ordinance
(Cap.569)

**ELECTION OF A NEW CHIEF EXECUTIVE
PURSUANT TO ARTICLE 53 OF THE BASIC LAW :
CHIEF EXECUTIVE ELECTION (AMENDMENT)
(TERM OF OFFICE OF THE CHIEF EXECUTIVE) BILL**

INTRODUCTION

At the meeting of the Executive Council on 16 March 2005, the Council **ADVISED** and the Acting Chief Executive **ORDERED** that the Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill (“the Bill”) should be introduced into the Legislative Council (“LegCo”) to provide that the term of a new Chief Executive (“CE”) elected pursuant to Article 53(2) of the Basic Law (“BL”) shall be the remainder of the term of the CE whose office has become vacant under section 4(b) or (c) of the Chief Executive Election Ordinance (“CEEEO”) (Cap. 569).

BACKGROUND AND ARGUMENT

2. The office of the CE became vacant on 12 March 2005. Pursuant to Article 53 of the BL, we need to hold an election to elect a new CE within six months for appointment by the Central People’s Government (“CPG”) to fill the vacancy. We need to amend the CEEEO to clarify that the term of office of the new CE so elected shall be the remainder of the term of the CE whose office has become vacant under section 4(b) or (c) of the CEEEO^{Note}.

^{Note} Section 4 of the CEEEO provides as follows:

- “4. 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.”

Term of office of the new CE

3. Article 46 of the BL stipulates that –

“The term of office of the Chief Executive of the Hong Kong Special Administrative Region shall be five years.”

Section 3(1) of the CEEO stipulates that –

“The term of office of the Chief Executive shall –

- (a) be 5 years; and
- (b) commence on the date on which he assumes office being the date specified for this purpose by the Central People’s Government in the instrument of appointment.”

Article 53 of the BL stipulates 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 this law.”

4. There is the question as to whether, where the office of the CE has become vacant under section 4(b) or (c) of the CEEO, the term of office of a new CE elected pursuant to Article 53 of the BL shall be five years, or the remainder of the term of the preceding CE.

5. Given the importance of the issue, the Secretary for Justice has re-examined the issue carefully. The opinion of the Secretary for Justice is at **Annex A**. The Secretary for Justice’s advice is that the term of office of the new CE elected under such circumstances should be the remainder of the term of the preceding CE. This view is supported by the Legislative Affairs Commission of the Standing Committee of the National People’s Congress.

Annex A

6. In the light of these opinions, and in order to give a clear legal basis to the appointment term of the new CE, we propose to amend section 3 of the CEEO to explicitly provide that when the office of the CE has become vacant under section 4(b) or (c) of the CEEO, the term of office of the new CE elected shall be the remainder of the term of the preceding CE. The Bill will be introduced into LegCo on 6 April 2005.

The Bill

7. The Bill amends section 3 of the CEEO by adding a subsection to provide that a CE who fills a vacancy in the office of the CE which arises under section 4(b) or (c) shall serve the remainder of the term of his predecessor.

Annex B

The existing provisions being amended are at **Annex B**.

Legislative Timetable

8. The legislative timetable will be –

Publication in the Gazette	24 March 2005
First Reading and commencement of Second Reading debate	6 April 2005
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

9. The proposal has no financial and civil service implications.

10. The proposal is in conformity with the BL, including the provisions concerning human rights.

PUBLIC CONSULTATION

11. We have briefed the LegCo House Committee on 15 March 2005 and the LegCo Panel on Constitutional Affairs on 21 March 2005 on the proposal for the Bill.

PUBLICITY

12. A press release will be issued before gazettal of the Bill and a spokesman will be made available to answer queries from the media.

ENQUIRY

13. Enquiries in relation to the Bill should be directed to Mr Raymond TAM, Principal Assistant Secretary for Constitutional Affairs (5), at 2810 2852 or Mr WH CHOW, Assistant Secretary for Constitutional Affairs (5A), at 2810 2064.

Constitutional Affairs Bureau
22 March 2005
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