

## **Legislative Council Panel on Constitutional Affairs**

### **Election of a New Chief Executive Pursuant to Article 53 of the Basic Law : Amendments to the Chief Executive Election Ordinance (Cap. 569)**

#### **Introduction**

The office of the Chief Executive (“CE”) became vacant on 12 March 2005. Pursuant to Article 53 of the Basic Law (“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 Chief Executive Election Ordinance (“CEEEO”) (Cap. 569) 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 4(c) of the CEEEO<sup>Note</sup>.

#### **Term of office of the new CE**

2. 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 CEEEO stipulates that –

“The term of office of the Chief Executive shall –

(a) be 5 years; and

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<sup>Note</sup> 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.”

- (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.”

3. There is the question as to whether, where the office of the CE has become vacant under section 4(b) or 4(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.

4. 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. The Secretary for Justice's advice is that the term of office of the new EC 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 National People's Congress.

5. 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 the CEEO to explicitly provide that when the office of the CE has become vacant under section 4(b) or 4(c) of the CEEO, the term of office of the new CE elected shall be the remainder of the term of the preceding CE. We plan to introduce an amendment bill into the Legislative Council in early April 2005.

Constitutional Affairs Bureau  
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