

Report to State Council

Report to the State Council concerning the submission of a request to the Standing Committee of the National People's Congress regarding the interpretation of Article 53(2) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Translation)

The State Council,

On 12 March 2005, the State Council approved by Order No. 433 the request of Mr Tung Chee Hwa to resign from the office of the Chief Executive of the Hong Kong Special Administrative Region. According to the relevant provisions of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China ("the Basic Law") and the Chief Executive Election Ordinance of the Hong Kong Special Administrative Region ("HKSAR"), a new Chief Executive shall be elected on 10 July (Sunday).

2. At a press conference held on 12 March, the Secretary for Justice of the HKSAR explained the HKSAR Government's position on the term of office of a new Chief Executive elected to fill a vacancy in the office of the Chief Executive, viz that the term of office of a new Chief Executive elected to fill the vacancy shall be the remainder of the term of the preceding Chief Executive. Accordingly, we need to amend the Chief Executive Election Ordinance to set out clearly and explicitly the term of office of a new Chief Executive elected to fill the vacancy in the office of the Chief Executive which arises other than due to the expiry of term.

3. Moreover, we have to address a practical issue, which is that the term of the current Election Committee will expire on 13 July this year. At the same time, we need to elect a new Chief Executive within the 6-month limit stipulated in Article 53 of the Basic Law. If we failed to elect a new Chief Executive on 10 July, we would not be able to complete the tasks within the remaining two months. These tasks include further amending the Chief Executive Election Ordinance to change the 120-day limit stipulated therein for electing a new Chief Executive, forming a new Election Committee, and electing a new Chief Executive.

4. If the HKSAR failed to elect a new Chief Executive lawfully and in time on 10 July, it would affect adversely the formulation of major government policies, the governance of Hong Kong and the normal operation of the Government. It might even precipitate a constitutional

crisis. Also, residents of the SAR and the international community might cast doubts on the determination and the ability of the HKSAR to implement the Basic Law. It would also have a negative impact on the operation of the financial market and the confidence of investors. All these would not be conducive to the prosperity and stability of Hong Kong.

5. On the term of office of the new Chief Executive, two different views have emerged in the community. Some support the view that it should be the remainder of the term; others consider that it should be a five-year term. It can be envisaged that the difference in opinion will persist. Moreover, a Member of the Legislative Council and individual members of the community have stated publicly that they will be seeking judicial review of the Bill to amend the Chief Executive Election Ordinance. In fact, the courts have received one such application on 4 April. Therefore, the SAR Government is facing two issues:

(1) in order to ensure the timely completion of the legislative process for the amendment bill, we need an authoritative and definitive interpretation of the relevant provisions of the Basic Law, so as to provide a solid basis for the local legislation;

(2) in the event of a judicial review, once it has been initiated, it will take a relatively long time to complete the judicial process. It is quite possible that we would not be able to elect a new Chief Executive in time on 10 July.

6. In the past few weeks, the HKSAR Government has been actively exploring viable options other than seeking an interpretation. However, we have not yet come across any viable option which on the one hand could ensure the election of a new Chief Executive lawfully and in time on 10 July, and on the other hand, could obviate the need to seek an interpretation by the NPCSC. Many in the community have pointed out that, given the pressing circumstances, the only feasible and timely option is to seek an interpretation by the NPCSC.

7. The HKSAR Government very much hope to avoid as far as possible seeking an interpretation in order to settle the matter. However, having taken into account all the considerations set out above, and bearing in mind the need to ensure the prosperity and stability of Hong Kong and the normal operation of all aspects of the community, I submit, in accordance with Article 43 and Article 48(2) of the Basic Law, this report to the State Council and propose to request the NPCSC to make an interpretation of Article 53(2) of the Basic Law regarding the term of office of the new Chief Executive.

8. I hereby submit this report.

Acting Chief Executive

of the Hong Kong Special Administrative Region

6 April 2005

Ends/Wednesday, April 6, 2005