

LCQ1: Date of the Chief Executive Election

Following is a question by the Hon Judy Chan and a reply by the Secretary for Constitutional and Mainland Affairs, Mr Erick Tsang Kwok-wai, in the Legislative Council today (April 6):

Question:

Section 10(1) of the Chief Executive Election Ordinance stipulates that if the office of the Chief Executive (CE) becomes vacant on the expiry of the term of office of CE, the date of the election to fill the vacancy should be set on the first Sunday of the period of 95 days preceding the expiry of the term of office. According to overseas experience, the transition period of the old and new governing teams is relatively short in general, with an aim to avoid uncertainty in policy direction and a decline in the motivation of officials. Taking the United States as an example, the period between the presidential election and the inauguration of the president of the current term is only two months or so. However, if the CE of the Hong Kong Special Administrative Region does not run for re-election, the transition period will start earlier at the end of the nomination period, which can be as long as four months before the new governing team takes office. In this connection, will the Government inform this Council:

(1) whether it has plans to review the requirement that the date of CE election should be set on the first Sunday of the period of 95 days preceding the expiry of the term of office of CE, so that a new requirement can be introduced for the CE elections to be held after the Sixth Term CE Election; if so, of the details; if not, the reasons for that; and

(2) given that even if the Election Committee cannot elect the new CE on the First Polling Day, the Returning Officer can still set the Sunday which is the 42nd day after the termination of the proceedings for the election as the Second Polling Day, whether the Government will, after taking into account such an arrangement, adjust the date for holding CE elections after the Sixth Term CE Election, so as to shorten the transition period of the old and new governing teams; if so, of the details; if not, the reasons for that?

Reply:

President,

The term of office of the Fifth Term Chief Executive (CE) of the Hong Kong Special Administrative Region (HKSAR) will end on June 30 this year and the office of the CE will become vacant on July 1. In this relation, in accordance with the relevant requirement under the Chief Executive Election Ordinance (Cap. 569) (CEE0), the HKSAR Government had originally specified March 27, 2022 as the polling day of the Sixth Term CE Election (CEE). The

outbreak of the fifth wave of epidemic is rapid and large scale, and is an occasion of public danger and emergency. In light of this, at the meeting on February 23, the Chief Executive-in-Council has agreed to invoke section 2(1) of the Emergency Regulations Ordinance (Cap. 241) (ERO) to make the Emergency (Date of Election) (Sixth Term Chief Executive) Regulation to postpone the polling day of the Sixth Term CEE to May 8 this year. Invoking the ERO to postpone the election is a one-off compromising solution which should not be generalised.

Regarding Hon Chan's questions, my detailed reply is as follows:

On (1), section 10(1) of the CEE0 provides that if the office of the CE becomes vacant on the expiry of the term of office of the CE, the polling day for the election to fill the vacancy should be set on the Sunday on / before the first day of the period of 95 days expiring at the beginning of the day on which the vacancy will arise. This provision has been in operation since 2001. Since the Second Term CEE in 2002, the polling day for each term of CEE was set on the basis of the provision which has operated effectively all along. Last year, the HKSAR Government had, on the basis of the "Decision of the National People's Congress on Improving the Electoral System of the Hong Kong Special Administrative Region" and the amended Annexes I and II to the Basic Law, introduced comprehensive amendments to the electoral laws through the 2021 Improving Electoral System (Consolidated Amendments) Ordinance, in which the aforementioned provision was kept intact.

In accordance with the stipulation under section 10(1) of the CEE0, there would be clear certainty about the polling day of each term of CEE in the future and the incumbent Government would have no flexibility to specify the polling day. This would eliminate any possible perception of unfairness as a result of having the incumbent Government to specify the polling day. On the other hand, requiring the CEE to be held on the Sunday on/before the first day of the period of 95 days expiring at the beginning of the day on which the vacancy will arise seeks to allow time for a number of important tasks, including:

- (i) allowing sufficient time for the CE-elect to form the new governing team;
- (ii) allowing sufficient time for the Central People's Government to appoint the CE and principal officials;
- (iii) allowing sufficient time for the new and incumbent governing teams to handover and work on transition arrangements; and
- (iv) allowing sufficient time to resolve possible legal challenges. In this regard, sections 34 and 39 of the CEE0 provide that the election results of the CEE could be challenged by election petition or judicial review respectively. The estimated time to resolve the legal challenge would be two months or more.

On (2), setting a polling day pursuant to section 10(1) of the CEE0 will allow around three months for the CE-elect to form the governing team and get

well prepared for the new term of Government. On the other hand, the CEE0 also provides that under certain situations, the election proceedings should be terminated and a new polling day should be specified. These situations include: a candidate is dead, a candidate is disqualified from being elected and no candidate is returned at the election. Once these situations occur, pursuant to section 11(2) of the CEE0, the second polling day should be set on the Sunday / first Sunday 42nd day after the termination of the proceedings for the election. Under such a circumstance, the CE-elect would still have around two months to carry out the preparation work, which should still be sufficient.

Since Hong Kong's return to the motherland, there has never been a second polling day for the CEE. Nevertheless, in view of the important constitutional status of the CE, for the sake of prudence, we consider that the determination of the new polling day should also cater for the possibility for a second polling day to be conducted within the term of the incumbent CE, so as to comply with Article 46 of the Basic Law, which provides that the term of office of the CE shall be five years. If we were to shorten the transition time, and set the date of the second polling day as the first polling day, in case there is a need to go for a second polling day, the preparation time for the CE-elect will be extremely tight, which would be undesirable. When planning the polling date, we consider it more appropriate to allow relatively abundant transition time for the CE-elect.

All in all, section 10(1) of the CEE0 has been operating effectively since its implementation. At present, we do not plan to amend the provision.

Thank you, President.