

Legislative Council Panel on Constitutional Affairs

**Legislative Council By-election for the
Five Geographical Constituencies**

PURPOSE

This paper informs Members of the way forward for the Legislative Council (“LegCo”) by-election for the five geographical constituencies (“GCs”).

BACKGROUND

2. On 25 January 2010, a LegCo Member from each of the five GCs submitted written notice of resignation to the Clerk to LegCo. Their resignation took effect on 29 January 2010.
3. Section 35 of the Legislative Council Ordinance (Cap. 542) (“LCO”) provides that the Clerk to LegCo must, by notice published in the Gazette, declare the existence of a vacancy in the membership of the LegCo within 21 days after becoming aware of the vacancy.
4. According to section 36(1)(a) of the LCO, the Electoral Affairs Commission (“EAC”) must arrange for a by-election to be held when the Clerk to LegCo makes a declaration as to the existence of a vacancy in the membership of the LegCo. Section 12 of the Electoral Affairs Commission Ordinance (Cap. 541) (“EACO”) specifies that all expenses properly incurred by the Commission, a member of the Commission or the Chief Electoral Officer (“CEO”) in the performance of any function under that or any other Ordinance shall be payable out of the general revenue. The Administration is obliged to discharge this statutory responsibility.

CONDUCT OF THE BY-ELECTION

5. Under the current legislation, the EAC has the statutory responsibility to arrange for by-elections to be held when vacancies arise in the membership of the LegCo. As a result of the resignation of the five Members, the EAC needs to arrange a by-election to fill the vacancies.

6. Any person who intends to be nominated as a candidate of a LegCo by-election will need to comply with the existing electoral legislation and guidelines.

7. The Basic Law does not provide for any referendum mechanism. Conducting any form of so-called ‘referendum’ in Hong Kong will have no legal basis or effect under the Basic Law and the legislation of Hong Kong, and will not be recognised by the Government. In order to make progress for Hong Kong’s constitutional development and to amend the two electoral methods for 2012, we must act in accordance with the procedures as stipulated in the Basic Law and secure consensus among the three parties concerned, i.e. the proposals put forth by the Hong Kong Special Administrative Region Government must obtain the support of a two-thirds majority of all LegCo Members, consent of the Chief Executive and endorsement of the Standing Committee of the National People’s Congress. The procedures for amending the two electoral methods for 2012 will not be affected by the results of the by-election arising from the resignation in the five GCs.

8. We also note that there are reservations in our community about the LegCo Members’ resignation for the purpose of initiating the so-called “referendum campaign” via the by-election. There are views that the legislation should be amended to avoid the recurrence of similar situations. The Government is currently consulting the public on the two electoral methods for 2012 and would take into account any proposals for amending the relevant legislation, if these are put forth during the consultation exercise.

SCALE OF THE BY-ELECTION AND FINANCIAL IMPLICATIONS

9. The arrangements to be put in place for the by-election will be modelled on those in previous general elections and by-elections. The costs involved will be based on such arrangements. A by-election for all the five GCs would be similar in scale to that of a general election.

10. In order to conduct the by-election for the five GCs, the Registration and Electoral Office (“REO”) would need to set up over 530 polling stations for the 3.37 million registered GC electors as in the 2008 LegCo Election. With the full implementation of the Voting by Imprisoned Persons Ordinance since 30 October 2009, the REO also needs to set up around 30 dedicated polling stations for registered electors who are imprisoned, remanded or detained by the law enforcement agencies.

11. As the year 2010 is a non-election year, the establishment of the REO stands at around 120 staff only. In order to organise the by-election, the REO would need around 20 additional time-limited civil service posts and create over 260 non-civil service contract (“NCSC”) positions. The additional time-limited civil service posts will mainly be arranged through internal redeployment within the Government.

12. In addition, it is also necessary to recruit and train around 15 000 electoral staff to carry out the polling and vote-counting duties on the polling day.

Estimated expenditure for the by-election

13. Having considered the scale of the LegCo by-election and the expenses incurred in previous elections/by-elections, we estimate that the expenditure for the by-election would amount to around \$ 159 million, with breakdown as follows –

	\$ million
(a) Staff Costs	
- time-limited civil service posts; and	10
- NCSC staff	21
(b) Publicity	3
(c) Election Expenses	125
Total	159

14. The average estimated expenditure for each vacancy is higher than the actual expenditure of the 2007 LegCo By-election for the Hong Kong Island GC, which was around \$20 million. This is because when the vacancy arose in the membership of the LegCo in 2007, the REO had started preparing for the 2007 District Council (“DC”) Election. The preparation for the two elections was handled together. Accordingly, part of the expenditure on staff remuneration for the LegCo By-election was saved.

15. It is also noteworthy that the amount of election expenditure is directly proportional to the number of electors and the number of polling stations. The expenditure for holding the 2007 DC Election, which covered 2.96 million registered electors and 488 polling stations¹, was over \$150 million. Taking this into account, we expect that the expenditure for holding the LegCo by-election for the five GCs, with over 3.37 million registered electors and 560 polling stations, would exceed \$150 million.

16. For the purpose of budgetary planning, provisions for conducting elections/by-elections have all along been included in the annual estimates of the REO’s Head of Expenditure, the aim of which is to provide the EAC with administrative support in the effective discharge of its statutory functions under the EACO and any other Ordinance. It is a matter of how much to be earmarked for this purpose each year, taking into account the elections/by-elections expected to be held in the relevant financial year. As the

¹ In the 2007 DC Election, since 41 out of 405 constituencies were uncontested, there was no need to hold elections for the relevant constituencies. The REO had set up 488 polling stations in Hong Kong for the election. As regards the by-election for all 5GCs, it is estimated that around 560 polling stations will be required with details set out in paragraph 10.

bulk of the costs of the LegCo by-election for the 5GCs will be incurred in 2010-11, in line with the established practice, the provisions for conducting the by-election will be reflected mainly in the REO's draft estimates for 2010-11. The REO should be able to absorb the costs to be incurred in 2009-10 within its provisions for the current financial year. Details of the REO's estimates will be set out in the draft 2010-11 Estimates to be released on 24 February 2010.

DATE OF THE BY-ELECTION

17. Under section 8 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D), as soon as practicable after a declaration is made by the Clerk to LegCo as to the existence of a vacancy in the membership of the LegCo (as referred to in paragraph 3 above), the CEO must publish a by-election notice in the Gazette. The by-election notice must state the date on which the by-election is to be held and the period within which nomination forms for the by-election are to be submitted to the Returning Officer. The REO is currently working out the schedule for the by-election.

WAY FORWARD

18. Members are invited to note and express views on the planned arrangements set out in this paper.

Constitutional and Mainland Affairs Bureau
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