

立法會
Legislative Council

Ref : CB2/BC/6/10

LC Paper No. CB(2)1224/11-12
(These minutes have been seen
by the Administration)

**Bills Committee on
Legislative Council (Amendment) Bill 2011**

**Minutes of the second meeting
held on 20 June 2011 at 8:30 am in the
Chamber of the Legislative Council Building**

- Members present** :
- Hon TAM Yiu-chung, GBS, JP (Chairman)
 - Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
 - Dr Hon Margaret NG
 - Hon CHEUNG Man-kwong
 - Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
 - Hon WONG Yung-kan, SBS, JP
 - Hon LAU Kong-wah, JP
 - Hon Miriam LAU Kin-yee, GBS, JP
 - Hon Emily LAU Wai-hing, JP
 - Hon LI Fung-ying, SBS, JP
 - Hon Audrey EU Yuet-mee, SC, JP
 - Hon CHEUNG Hok-ming, GBS, JP
 - Hon WONG Ting-kwong, BBS, JP
 - Prof Hon Patrick LAU Sau-shing, SBS, JP
 - Hon Cyd HO Sau-lan
 - Hon CHAN Kin-por, JP
 - Dr Hon Priscilla LEUNG Mei-fun
 - Hon WONG Kwok-kin, BBS
 - Hon IP Wai-ming, MH
 - Hon IP Kwok-him, GBS, JP
 - Dr Hon PAN Pey-chyou
 - Hon Alan LEONG Kah-kit, SC
 - Hon Tanya CHAN
- Members absent** :
- Hon Jeffrey LAM Kin-fung, SBS, JP (Deputy Chairman)
 - Hon Albert HO Chun-yan
 - Dr Hon Philip WONG Yu-hong, GBS
 - Hon LAU Wong-fat, GBM, GBS, JP

Hon Timothy FOK Tsun-ting, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon WONG Kwok-hing, MH
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Dr Hon LAM Tai-fai, BBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun
Hon LEUNG Kwok-hung
Hon Albert CHAN Wai-yip
Hon WONG Yuk-man

Public Officers : Constitutional and Mainland Affairs Bureau
attending

Mr Stephen LAM Sui-lung
Secretary for Constitutional and Mainland Affairs

Ms Adeline WONG Ching-man
Under Secretary for Constitutional and Mainland Affairs

Mr Arthur HO Kin-wah
Deputy Secretary for Constitutional and Mainland Affairs

Mr Freely CHENG Kei
Principal Assistant Secretary for Constitutional and
Mainland Affairs

Department of Justice

Mr Gilbert MO Sik-keung
Deputy Law Draftsman
(Bilingual Drafting and Administration)

Miss Emma WONG
Senior Government Counsel

Clerk in : Miss Flora TAI
attendance : Chief Council Secretary (2)3

Staff in : Mr Arthur CHEUNG
attendance : Senior Assistant Legal Adviser 2

Ms Alice LEUNG
Senior Council Secretary (2)2

Action

I. Meeting with the Administration

[CMAB C1/30/5, LC Paper Nos. LS72/10-11, CB(2)1787/10-11(01), CB(2)2106/10-11(01), CB(2)2098/10-11(01), and CB(3)840/10-11]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

Admin

2. The Administration was requested to provide a written response to the submission of the Hong Kong Bar Association ("the Bar Association") on the Bill dated 17 June 2011.

(Post-meeting note: The Administration's response to the submission dated 17 June 2011 and the statement dated 21 June 2011 (LC Paper Nos. CB(2)2214/10-11(02) and CB(2)2181/10-11(01) respectively) from the Bar Association on the proposed replacement arrangement was tabled at the Bills Committee meeting on 24 June 2011 and issued to members vide LC Paper No. CB(2)2214/10-11(01).)

II. Any other business

3. Members noted that the next meeting would be held on Tuesday, 21 June 2011 from 8:30 am to 10:30 am to continue scrutinizing the Bill.

4. There being no other business, the meeting ended at 10:30 am.

Council Business Division 2
Legislative Council Secretariat
28 February 2012

**Proceedings of the second meeting of the
Bills Committee on Legislative Council (Amendment) Bill 2011
on Monday, 20 June 2011 at 8:30 am
in the Chamber of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000846 - 001158	Chairman Administration	<p>Opening Remarks</p> <p>The Administration's brief recapitulation of members' major concerns raised at the last meeting.</p>	
001159 - 002211	Chairman Ms Emily LAU Administration	<p>Ms Emily LAU's request for the Administration to provide a written response to the Hong Kong Bar Association ("the Bar Association")'s views about the non-conformity of the Bill with Articles 26 and 68 of the Basic Law ("BL"), the Hong Kong Bill of Rights ("HKBOR") and the International Covenant on Civil and Political Rights ("ICCPR").</p> <p>The Administration's response that -</p> <p>(a) neither BL nor HKBOR required that any causal vacancy must be filled by means of a by-election. Nor did they mandate that a vacancy be filled by any particular method. There were other electoral systems where causal vacancies were filled by reference to votes casted in the previous general election instead of holding a by-election;</p> <p>(b) the proposed replacement mechanism was consistent with the proportional representation system used in the Geographic Constituency ("GC") general election, and the candidate selected to fill the casual vacancy under the proposed mechanism was still chosen by reference to the result of the previous general election. Accordingly, even after the proposed mechanism had introduced, the Legislative Council ("LegCo") would continue to be "constituted by election" under BL 68;</p>	Admin to provide a written response (paragraph 2 of the minutes)

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>(c) the right of permanent residents who were registered electors to vote and to stand for election in general elections was in no way affected by the proposed mechanism. The proposal was therefore consistent with Article 21(b) of HKBOR and BL 26; and</p> <p>(d) the Bill was introduced by the Government and it was for LegCo to consider whether it was to be passed into law.</p>	
002212 - 002959	Chairman Ms Miriam LAU Administration	<p>Ms Miriam LAU asked why those situations as set out in section 15 of the Legislative Council Ordinance (Cap. 542) ("LCO") and BL79 which were outside the control of the Member could not be excluded from the proposed mechanism.</p> <p>The Administration's response that -</p> <p>(a) it was necessary to plug the loophole whereby Members could resign at will, giving rise to unnecessary by-elections, and thereby incurring unnecessary public expenditure;</p> <p>(b) it was necessary to forestall situations whereby a Member could make use of the provisions of BL79 to bring about a situation that required the President of LegCo to declare that the Member concerned was no longer qualified for the office. There were possibilities that a Member could take such a course of action; and</p> <p>(c) the Administration considered that the proposed mechanism which determined the replacement candidates based on the list proportional representation voting system to fill vacancies arising in different situations would be more able to withstand a legal challenge in the court.</p>	
003000 - 003621	Chairman Dr Margaret NG Administration	Dr Margaret NG queried why the Administration had not consulted any political party given the significant impact of the proposed mechanism on the general election.	

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		<p>She urged members not to support the Bill and called on the Administration to withdraw the Bill until a full public consultation had been conducted.</p> <p>The Administration stressed that there was an urgency for the Bill to be enacted within the current legislative session in order to provide sufficient notice for potential candidates to consider whether to stand for the upcoming District Council ("DC") election to be held on 6 November 2011 and to organize publicity to help electors understand the arrangements for the LegCo election in 2012. The low voter turnout rate for the 2010 LegCo by-election had clearly reflected that many members of the public did not accept that Members could resign at will to bring about a so-called "referendum".</p>	
003622 - 004143	Chairman Mr WONG Kwok-kin Administration	<p>Mr WONG Kwok-kin's concern about the scope of the proposed mechanism covering situations encompassed by section 15 of LCO and BL 79 only but not the traditional Functional Constituencies ("FCs").</p> <p>The Administration's explanation that the voting arrangements for the DC (second) FC would be similar to that for GCs under which lists of candidates would stand for election for the new seats. It was proposed that the replacement mechanism might also apply to a vacancy for the DC (second) FC. On the other hand, traditional FCs did not adopt the list proportional representation voting system and thus, by-elections would be held to fill the vacancies.</p>	
004144 - 004727	Chairman Mr IP Kwok-him Administration	<p>Mr IP Kwok-him's advice that the Democratic Alliance for the Betterment and Progress of Hong Kong in general supported the Administration in proposing the Bill although the proposed replacement mechanism was not perfect. However, the Administration must address the issues raised by the Bar Association in its submission.</p> <p>The Administration's reiteration of its explanation why the replacement mechanism</p>	Admin to provide a written response (paragraph 2 of the minutes)

Time Marker	Speaker(s)	Subject(s)	Action required
		was in conformity with BL, HKBOR and ICCPR.	
004728 - 005330	Chairman Ms Cyd HO Administration	<p>Ms Cyd HO's remarks that given that a wide range of factors would affect the election results under a proportional representation system, by-elections should be held to fill vacancies arising mid term.</p> <p>The Administration's advice that in accordance with the new proposed section 35A(9), if a vacancy in the membership of the LegCo to which section 35A applied was not filled by the operation of the proposed replacement mechanism, the Returning Officer must publicly declare that the vacancy was not filled, publish the declaration in the Gazette and a by-election would be held.</p>	
005331 - 010033	Chairman Mr Alan LEONG Administration	Mr Alan LEONG queried how electors could at the time of voting at a general election know how to cast their votes as the vacant seat left by the resigned Member might be filled by another candidate of a different political affiliation.	
010034 - 010549	Chairman Ms LI Fung-ying Administration	<p>Ms LI Fung-ying urged the Administration to reconsider comprehensively the proposed arrangement as the Administration proposed to adopt the same replacement mechanism to fill vacancies arising in circumstances which were outside the control of the Member. She considered that when a Member who represented his list of candidates had to leave office or chose to resign, it was reasonable that the vacant seat should be filled by the next candidate on the same list as the resigned Member.</p> <p>The Administration's explanation that the proposed mechanism was put forward to plug a loophole in the existing replacement arrangement under which a Member could resign to force a by-election and stand for that by-election. The proposal for not filling a vacancy with a candidate from the list was to avoid a Member handing over his seat to a successor of the same affiliation.</p>	

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010550 - 011146	Chairman Dr Priscilla LEUNG Administration	<p>Dr Priscilla LEUNG called on the Administration to consider seriously excluding those situations which were outside the control of the Member (e.g. death, sickness or bankruptcy) from the proposed arrangement.</p> <p>The Administration reiterated that it was the Administration's policy to have the same arrangement for all situations.</p>	
011147 - 011923	Chairman Dr Margaret NG Administration	<p>Dr Margaret NG's reiteration that it was incumbent upon the Administration to conduct public consultation on the Bill and Members should discuss thoroughly the proposed replacement arrangement having regard to its impact on the operation of LegCo.</p> <p>The Administration's reiteration that the Bill was introduced by the Government and it was for LegCo to consider whether it was to be passed into law. The Administration respected the decisions of LegCo.</p>	
011924 - 012557	Chairman Mr Alan LEONG Administration	<p>Mr Alan LEONG's view that the proposal would distort the will of the electorate and the filling of vacancies by the proposed arrangement would contravene the spirit of the proportional representation system.</p> <p>The Administration stressed that its proposal was consistent with the proportional representation electoral system and could reflect the overall will of the electorate expressed during the general election.</p>	
012558 - 013116	Chairman Mr CHEUNG Man-kwong Administration	<p>Mr CHEUNG Man-kwong's caution that the Administration that the public would raise strong protest against the Government if they did not support the proposed replacement mechanism.</p>	
013117 - 015046	Chairman Mr WONG Ting-kwong Administration Ms Audrey EU Ms Cyd HO	<p>Mr WONG Ting-kwong's view that the proposed mechanism could avoid the recurrence of similar incident where a Member from each of the five GCs resigned from the membership of the LegCo in January 2010.</p>	

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		<p>Ms Audrey EU's view that the reason behind the Administration's introduction of the Bill was that the "referendum" was supported by the society.</p> <p>Ms Cyd HO's view that the proposed mechanism would deprive the public's right to vote, and destroy the proportional representation system if the vacancies were to be filled by candidates with the largest number of remainder votes.</p> <p>The Administration's response that BL did not provide for any referendum mechanism and reiteration that there was an urgency for the Bill to be enacted within the current legislative session.</p>	
015047 - 015939	Chairman Dr Margaret NG Administration	Dr Margaret NG's concern about the inconsistency in the use of expressions "the person is eligible to become a Member" and "the person has been elected as a Member" in the new proposed sections 35A(5)(b) and 35(A)(8)(c) respectively. Her reiteration that the Administration should withdraw the Bill.	
015940 - 015954	Chairman	Date of next meeting	