

**立法會**  
**Legislative Council**

Ref : CB2/BC/6/10

LC Paper No. CB(2)1507/11-12  
(These minutes have been seen  
by the Administration)

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

**Minutes of the fifth meeting  
held on 23 June 2011 at 8:30 am in the  
Chamber of the Legislative Council Building**

- Members present** :
- Hon TAM Yiu-chung, GBS, JP (Chairman)
  - Hon Jeffrey LAM Kin-fung, SBS, JP (Deputy Chairman)
  - Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
  - Dr Hon Philip WONG Yu-hong, GBS
  - Hon WONG Yung-kan, SBS, JP
  - Hon LAU Kong-wah, JP
  - Hon Miriam LAU Kin-ye, GBS, JP
  - Hon Abraham SHEK Lai-him, SBS, JP
  - Hon LI Fung-ying, SBS, JP
  - Hon WONG Kwok-hing, MH
  - Hon CHEUNG Hok-ming, GBS, JP
  - Hon WONG Ting-kwong, BBS, JP
  - Hon CHIM Pui-chung
  - Prof Hon Patrick LAU Sau-shing, SBS, JP
  - 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 Paul TSE Wai-chun
- Member Attending** :
- Hon LEUNG Kwok-hung
- Members absent** :
- Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
  - Hon Vincent FANG Kang, SBS, JP
  - Dr Hon LAM Tai-fai, BBS, JP
  - Hon Mrs Regina IP LAU Suk-ye, GBS, JP

**Public Officers :** Constitutional and Mainland Affairs Bureau  
**attending**

Mr Stephen LAM Sui-lung  
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

Mrs Fanny TSANG  
Legislative Assistant (2)3

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Action

**I. Meeting with the Administration**

[LC Paper Nos. CB(2)2156/10-11(01), CB(3)840/10-11, CB(2)2106/10-11(01), CB(2)2180/10-11(01)]

The Bills Committee deliberated and continued the clause-by-clause examination of the Bill (index of proceedings attached at **Annex**).

Withdrawal of membership

2. Members noted that 12 members including Mr Albert HO, Dr Margaret NG, Mr CHEUNG Man-kwong, Ms Emily LAU, Ms Audrey EU, Mr Ronny TONG, Ms Cyd HO, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr CHAN Wai-yip and Mr WONG Yuk-man had written jointly on 22 June 2011 to withdraw from the Bills Committee [LC Paper No. CB(2)2185/10-11(01)]. The Bills Committee presently comprised 25 members and the quorum was eight members.

Follow-up actions required of the Administration

Admin 3. The Administration was requested to consider -

- (a) further amendment to the proposed section 35A(8)(b) to clarify that the replacement arrangements concerning the precedence list would also be regarded as part of an election; and
- (b) whether the newly proposed item (e) (i.e. a ground specified in any other enactment that enabled an election to be questioned) which were one of the grounds of an election petition against a precedence list specified in the proposed section 61(2B) should be deleted.

Admin 4. The Administration informed members that the Constitutional and Mainland Affairs Bureau would provide a written response to the submission of the Hong Kong Bar Association ("the Bar Association") dated 17 June 2011 and its statement dated 21 June 2011 later that day.

*(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).)*

Action

## **II. Any other business**

### Date of next meeting

5. Members agreed that the meeting originally scheduled for the same day from 2:30 pm to 5:30 pm would be cancelled as the Council meeting of 22 June 2011 would be resumed at 2:30 pm that day, and the next meeting of the Bills Committee would be held on Friday, 24 June 2011 from 9:00 am to 1:00 to follow up the outstanding issues raised by members.

6. There being no other business, the meeting ended at 10:45 am.

Council Business Division 2  
Legislative Council Secretariat  
26 March 2012

**Proceedings of the fifth meeting of the  
Bills Committee on Legislative Council (Amendment) Bill 2011  
on Thursday, 23 June 2011 at 8:30 am  
in the Chamber of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000103 - 000153	Chairman	Opening Remarks  Withdrawal of membership	
<b>Continuation of Clause-by-clause examination of the Bill</b>			
000154 - 001339	Chairman Administration Mr LAU Kong-wah Mr Paul TSE	<p><b>Clauses 10, 11 and 12</b></p> <p><u>Clause 11</u></p> <p>The Administration advised that it would propose Committee Stage amendments ("CSAs") to -</p> <p>(a) section 67 to the effect that in determining an election petition which concerned a precedence list compiled by the Returning Officer ("RO"), the Court of First Instance ("CFI") must determine whether the person whose election was questioned was or was not duly elected and if not duly elected, determine whether some other person (whether in or not in the precedence list) was duly elected instead, or whether a by-election was to be held to fill the vacancy that arose as a result; and</p> <p>(b) give the powers for the Court of Final Appeal ("CFA") to deal with an appeal against CFI's determination of an election petition.</p> <p>On Mr LAU Kong-wah's question about the considerations for CFA to determine an appeal, the Administration responded that the Court would consider whether there were grounds that material irregularity occurred in relation to the relevant election, the polling or counting of votes at the relevant election or the compilation of the precedence list.</p>	
001340 - 001639	Chairman Administration	<b>Part 3: Amendments to Electronic Transactions (Exclusion) Order (Cap. 533 sub.leg.B)</b>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p><b>Clauses 13, 14 and 15</b></p> <p>The Administration advised that some documents used in relation to the proposed replacement mechanism (e.g. the notice delivered under section 35A to the person who ranked highest on the precedence list for the constituency concerned and the confirmation from the person concerned) had to be in paper form.</p> <p>Completion of the clause-by-clause examination of the Bill</p>	
<b>Issues raised at the previous meetings and the draft CSAs to be proposed by the Administration</b>			
001640 - 002023	Chairman Administration	<p>Briefing by the Administration of its papers (which were tabled at the meeting on 22 June 2011) -</p> <p>(a) a paper on the compilation of a precedence list, the replacement mechanism and the lodging of election petitions against a precedence list and CSAs to be proposed by the Administration [LC Paper No. CB(2)2156/10-11(01)]; and</p> <p>(b) the marked-up version of relevant provisions of the Legislative Council Ordinance (Cap. 542) ("LCO") [LC Paper No. CB(2)2180/10-11(01)].</p>	
002024 - 003101	Chairman Mr WONG Kwok-hing Administration	<p><u>Compilation of a precedence list</u></p> <p>Mr WONG Kwok-hing considered that the names in the precedence list should also include (a) the second candidate who had not yet been elected in any list of candidates having valid votes but had no candidate duly elected; and (b) the second candidate who had not yet been elected in any list of candidates which had any number of candidates elected and had remaining votes that did not return a candidate.</p>	
003102 - 003554	Chairman Prof Patrick LAU Administration	<p>In response to Prof Patrick LAU's question, the Administration advised that if a geographical constituency ("GC") election was uncontested, there would not be a precedence list for the GC constituency concerned. If a vacancy in the</p>	

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		membership of the Legislative Council ("LegCo") arose during the term of office of LegCo in the GC constituency concerned, a by-election would be conducted.	
003555 - 004122	Chairman Mr Paul TSE Administration	On Mr Paul TSE's enquiry about whether and when the precedence list would be updated, the Administration advised that under the proposed section 58B(6) (previously proposed section 58A(6)) and the new proposed section 58B(6A) (as prescribed in the CSAs to be proposed by the Administration), if a precedence list published by the RO was revised, the RO must announce the revision and publish the list as revised.	
004123 - 005106	Chairman Administration Mr LAU Kong-wah	<p><u>The replacement mechanism</u></p> <p>Mr LAU Kong-wah raised concern about the scope of the word "查訊" in the proposed section 35A(5)(b) and asked about the scope of the inquiry which would be conducted by the RO.</p> <p>The Administration explained that the Chinese rendition of "inquiry" was "查訊" and an inquiry referred to a formal enquiry seeking information. The RO would need to ascertain from the person who ranked highest in the precedence list as to whether that person was eligible to become a Member under the proposed section 35A(6). The RO would make the inquiry in a form to be specified.</p> <p>On the draft CSA to be proposed by the Administration to amend the proposed section 35A(8)(b) as "the process through which the person becomes a Member under this section is to be regarded as part of an election, ...", Mr LAU Kong-wah suggested that the Administration should consider enhancing the clarity of the provision to the effect that the replacement arrangements concerning the precedence list would be regarded as part of the general election.</p>	<b>Admin</b> (para 3(a) of the minutes)
005107 - 005635	Chairman Dr Priscilla LEUNG Administration	Referring to paragraph 2 of the Administration's paper [LC Paper No. CB(2)2156/10-11(01)] concerning the names of the persons on the precedence list under the now proposed section 58B, Dr Priscilla LEUNG expressed the view that	

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		the term "the next highest vote candidate eligible for the precedence list" might be more appropriate than the term "the first unelected candidate".	
005636 - 010018	Chairman SALA2 Administration	In response to SALA2's request for clarification as to whether there would be a minimum threshold of valid votes for candidates to be included in the precedence list, the Administration advised that under LCO, there was no requirement for a candidate to obtain a minimum threshold of valid votes to become a Member. The requirement for a candidate to obtain respectively 3% or 5% of the total number of valid votes for the GC concerned in order to be eligible for a refund of election deposit or financial assistance was not applicable to the eligibility of a candidate to become a Member.	
010019 - 014653	Chairman Administration Mr Paul TSE Mr LAU Kong-wah Dr Priscilla LEUNG Ms Miriam LAU	<p><u>Election petitions</u></p> <p>Members were concerned as to whether an election petition could be lodged after the two-month period prescribed under the proposed section 65(2).</p> <p>The Administration explained that as provided under the proposed section 65(2), the period within which an election petition questioning a precedence list could be lodged was two months following the date on which the list was published. There was a separate provision (i.e. the proposed section 61(1)(a)(ia)) providing that an election petition could be lodged against a person in the precedence list who became a Member under the proposed section 35A (on the ground that the person was not eligible to become a Member). Such an election petition would be subject to the same two-month deadline for lodging petitions under section 65(1).</p> <p>Referring to paragraph 8 of the Administration's paper [LC Paper No. CB(2)2156/10-11(01)], Mr LAU Kong-wah and Dr Priscilla LEUNG expressed the view that it was not desirable to include a new item (e) (i.e. a ground specified in any other enactment that enabled an election to be questioned) as one of the grounds of an election petition against a precedence list specified in the proposed section 61(2B). The Administration was requested to consider their views.</p>	<b>Admin</b> (para 3(b) of the minutes)

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014654 - 015232	Chairman Mr Abraham SHEK Administration	Mr Abraham SHEK opined that as the head of the Department of Justice, the Secretary for Justice ("SJ") should respond by himself to the views of the Hong Kong Bar Association ("the Bar Association") about the non-conformity of the Bill with Articles 26 and 68 of the Basic Law ("BL").  The Administration responded that a written response from the Constitutional and Mainland Affairs Bureau to the Bar Association's views would be provided to members via the LegCo Secretariat later that day.	<b>Admin</b> (para 4 of the minutes)
015233 - 020355	Chairman Dr Priscilla LEUNG Administration	Dr Priscilla LEUNG reiterated her earlier view that the Administration should consider excluding those situations as set out in section 15 of LCO (i.e. the death of a Member) and in BL 79 (i.e. when a Member lost the ability to discharge his duties as a result of serious illness or other reasons) from the scope of the proposed replacement mechanism.  The Administration reiterated its views on why the same replacement mechanism should be adopted to fill vacancies arising in different situations.	
020356 - 021447	Chairman Mr Paul TSE Administration Dr Priscilla LEUNG Mrs Sophie LEUNG	Mr Paul TSE and Mrs Sophie LEUNG shared the view of Mr Abraham SHEK that SJ should respond to the views of the Bar Association.	
021448 - 021519	Chairman	Cancellation of the meeting originally scheduled for 23 June 2011 at 2:30 pm  Date of next meeting	