

立法會
Legislative Council

Ref : CB2/BC/6/10

LC Paper No. CB(2)1508/11-12
(These minutes have been seen
by the Administration)

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

**Minutes of the sixth meeting
held on 24 June 2011 at 9:00 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)
 - Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
 - 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 WONG Kwok-hing, MH
 - Hon CHEUNG Hok-ming, GBS, JP
 - Hon WONG Ting-kwong, BBS, JP
 - Prof Hon Patrick LAU Sau-shing, SBS, JP
 - Dr Hon LAM Tai-fai, BBS, 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
 - Hon Mrs Regina IP LAU Suk-ye, GBS, JP
 - Dr Hon PAN Pey-chyou
 - Hon Paul TSE Wai-chun
- Members absent** :
- Hon LI Fung-ying, SBS, JP
 - Hon Vincent FANG Kang, SBS, JP
 - Hon CHIM Pui-chung

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

Ms Anne TENG Yu-yan
Principal Assistant 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

Action

I. Meeting with the Administration

[LC Paper Nos. CB(2)2190/10-11(01), CB(2)2156/10-11(01) and CB(2)2180/10-11(01)]

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

Papers provided by the Administration at the meeting

2. Members noted that the following papers were tabled by the Administration at the meeting -

- (a) the Administration's response to the submission dated 17 June 2011 and the statement dated 21 June 2011 from the Hong Kong Bar Association ("the Bar Association") [issued vide LC Paper No. CB(2)2214/10-11(01) on 24 June 2011];
- (b) the Administration's response to issues raised at the meeting on 23 June 2011 [issued vide LC Paper No. CB(2)2190/10-11(01) on 28 June 2011]; and
- (c) the Administration's paper on "Referendum and scope of application of replacement mechanism" [issued vide LC Paper No. CB(2)2222/10-11(01) on 28 June 2011].

Committee Stage amendments ("CSAs") to be proposed by the Administration

3. Members noted the Administration's explanation that the purpose of the proposed amended sections 67 and 70B was to empower the Court of First Instance ("CFI") or the Court of Final Appeal ("CFA") to determine an election petition against a decision made by a Returning Officer as regards the compilation of a precedence list or the eligibility of a person on a precedence list to become a Member. To address Dr Priscilla LEUNG's concern that the drafting of the newly proposed sections 67(2) and 70B(a)(ii) under which the CFI and the CFA must determine whether the precedence list was valid might give rise to possible judicial challenge on the proposed replacement mechanism, the Administration undertook to elaborate at the Second Reading debate on the Bill the legislative intent of and the inter-relation among the relevant provisions.

Admin

4. At members' request, the Administration undertook to provide a full set of CSAs to members for consideration. The Administration also undertook to discuss with the Electoral Affairs Commission whether the ballot papers for elections should be kept for longer than six months after counting.

Admin

Action

Follow-up actions required of the Administration

- Admin 5. The Administration was requested to consider -
- (a) in respect of the Administration's further proposed amendment to the now proposed section 35B(8)(b), whether the wording of the phrase "the relevant election" in the Chinese version of the Bill be amended from "有關選舉" to "該項選舉";
 - (b) reviewing the drafting of section 67(2)(a) for the purpose of improving its clarity of the scope of "some other person (whether or not that other person is on a precedence list published under section 58B)";
 - (c) adding "Subject to subsection (2)" in the beginning of Clause 1(3) to dispel any ambiguity about the commencement date of sections 1, 2 and 7 of the Legislative Council (Amendment) Ordinance 2011 (which related to the compilation and publication of a precedence list);
 - (d) in respect of the proposed CSA to section 35A(1)(a), whether "or 72(1)" should be added after "15(1)"; and
 - (e) refining the Chinese rendition of "precedence list" from "遞補順位名單" to "遞補名單".

Follow-up actions by the Legislative Council Secretariat

- Clerk 6. The Chairman asked the Clerk to send a copy of LC Paper No. CB(2)2214/10-11(01) to the Bar Association and invite the Association to send in further views if any.

Verbal report to the House Committee

7. Members noted that the Administration would resume the Second Reading debate on the Bill at the Council meeting on 13 July 2011, and the deadline for giving notice for moving CSAs to the Bill would be 4 July 2011. Members agreed that the Chairman would make a verbal report to the House Committee in the afternoon of the meeting day as no House Committee meeting would be held on 1 July 2011.

Action

8. Members further agreed that if necessary the Chairman would convene a meeting to consider the draft CSAs to be revised by the Administration.

II. Any other business

9. There being no other business, the meeting ended at 12:50 pm.

Council Business Division 2
Legislative Council Secretariat
26 March 2012

**Proceedings of the sixth meeting of the
Bills Committee on Legislative Council (Amendment) Bill 2011
on Friday, 24 June 2011 at 9:00 am
in the Chamber of the Legislative Council Building**

| Time Marker | Speaker(s) | Subject(s) | Action required |
|-----------------|---|---|-----------------|
| 000154 - 000512 | Chairman Administration | <p>Opening remarks</p> <p>The Administration informed members that the following papers were tabled at the meeting -</p> <p>(a) the Administration's response to the submission dated 17 June 2011 and the statement dated 21 June 2011 from the Hong Kong Bar Association [LC Paper No. CB(2)2214/10-11(01)];</p> <p>(b) the Administration's response to issues raised at the meeting on 23 June 2011 [LC Paper No. CB(2)2190/10-11(01)]; and</p> <p>(c) the Administration's paper on "Referendum and scope of application of replacement mechanism" [LC Paper No. CB(2)2222/10-11(01)].</p> | |
| 000513 - 002549 | Chairman SALA2 Dr Priscilla LEUNG Administration | <p>In response to SALA2's question, the Administration reiterated its explanation about the timeframe for lodging an election petition.</p> <p>The Administration also advised that it would propose Committee Stage amendments ("CSAs") to further amend sections 67(2) and 70B(a)(ii) to ensure that any by-election would only be arranged by the Electoral Affairs Commission in the circumstances under section 36.</p> <p>Dr Priscilla LEUNG expressed concern that the drafting of the proposed sections 67(2) and 70B(a)(ii) might give rise to possible judicial challenge on the proposed replacement mechanism. In her view, the only scenario that the precedence list would be determined by the Court as invalid was where the relevant geographical constituency ("GC") or the District Council (second) functional constituency ("DC (second) FC") election had to be declared invalid.</p> | |

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| 002550 - 003549 | Chairman Mr LAU Kong-wah Administration | <p>Mr LAU Kong-wah sought clarification from the Administration as to whether a person could lodge an election petition against a person who becomes a Member through the proposed replacement mechanism after the two-month period as prescribed under the proposed section 65(2) (now proposed section 65(3)).</p> <p>The Administration advised that in the light of members' comments raised at the meeting on 23 June 2011, it would propose a further CSA to amend the proposed section 35A(8)(b) (now proposed section 35B(8)(b)) to give effect that the process through which the person became a Member under this section was to be regarded as a part of the result of the relevant election.</p> | |
| 003550 - 004149 | Chairman Dr Philip WONG Administration | Dr Philip WONG expressed concern whether there was an avenue of appeal against the Court of First Instance ("CFI")'s determination. | |
| 004150 - 005045 | Chairman Dr Priscilla LEUNG Administration Mr Paul TSE | <p>Dr Priscilla LEUNG reiterated her concern about the drafting of the proposed sections 67(2) and 70B(a)(ii).</p> <p>The Administration advised that the purpose of the proposed amended sections 67 and 70B was to empower CFI or the Court of Final Appeal to determine an election petition against a decision made by a Returning Officer ("RO") as regards the compilation of a precedence list or the eligibility of a person on a precedence list to become a Member. To address members' concern, the Administration undertook to elaborate at the Second Reading debate on the Bill the legislative intent of and the inter-relation among the relevant provisions.</p> | Admin (para 3 of the minutes) |
| 005046 - 005841 | Chairman Mr WONG Ting-kwong Administration Dr Priscilla LEUNG | <p>Mr WONG Ting-kwong expressed concern that if many candidates in the precedence list were unable to take up the vacant seat for whatever reasons, a candidate who had obtained only a few votes (and had his deposit already forfeited) might be returned as Member.</p> <p>The Administration advised that according to past experience with the proportional representation list-voting system, amongst the candidates not elected in a GC, the candidates</p> | |

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| | | with the highest number of votes could obtain around 10 000 to 20 000 valid votes cast for the constituency. In addition, the upcoming elections for the GC and the five DC (second) FC seats were expected to be competitive. | |
| 005842 - 010112 | Chairman Mr CHAN Kin-por Administration | In response to Mr CHAN Kin-por's enquiry, the Administration explained that if the precedence list was exhausted and the vacancy could not be filled by the operation of the replacement mechanism, the RO must declare publicly that the vacancy was not filled by publishing the declaration in the Gazette and a by-election would be held. | |
| 010113 - 010248 | Chairman Administration | <u>The Administration's response to issues raised by members at the meeting on 23 June 2011</u> Briefing by the Administration on its response [LC Paper No. CB(2)2190/10-11(01)] | |
| 010249 - 010606 | Chairman Mr LAU Kong-wah Administration Dr Priscilla LEUNG | On the Administration's proposal to further amend the now proposed section 35B(8)(b) as follows (further amendment underlined): "(b) the process through which the person becomes a Member under this section is to be regarded as <u>a part of the result of the relevant election</u> , ...". Mr LAU Kong-wah and Dr Priscilla LEUNG suggested that the wording of "the relevant election" in the Chinese version of the Bill should be amended from "有關選舉" to "該項選舉". | Admin (para 5(a) of the minutes) |
| 010607 - 011554 | Administration Chairman Mr LAU Kong-wah | On the Administration's proposal to further amend section 67(2) so that the CFI would determine if the precedence list was valid instead of whether a by-election was to be held, Mr LAU Kong-wah requested the Administration to review the drafting of the provision for the purpose of improving its clarity regarding the scope of "some other person (whether or not that other person is on a precedence list published under section 58B)" referred in section 67(2)(a). | Admin (para 5(b) of the minutes) |
| 011555 - 011709 | Chairman Mr Jeffrey LAM Administration | On Mr Jeffrey LAM's concern about the length of time that the ballot papers for elections would be kept after counting, the Administration advised that it was an established practice for the | |

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| | | Registration and Electoral Office to destroy all ballot papers for elections six months after counting. | |
| 011710 - 012545 | Chairman Dr Priscilla LEUNG Administration Mr Paul TSE | At members' request, the Administration undertook to provide a full set of CSAs to members for consideration. | Admin (para 4 of the minutes) |
| 012546 - 012945 | Chairman Mr LAU Kong-wah Administration | Mr LAU Kong-wah raised similar concern about the length of time that the ballot papers for elections would be kept after counting. In the light of members' concern, the Administration undertook to discuss with the Electoral Affairs Commission whether the ballot papers should be kept for a longer time after counting. | Admin (para 4 of the minutes) |
| 012946 - 013515 | Chairman Administration SALA2 Mr Paul TSE | <u>Draft CSAs to be proposed by the Administration</u> [Annex to LC Paper No. CB(2)2156/10-11(01)] Clause 1(2) SALA2 suggested to add "Subject to subsection (2)" in the beginning of Clause 1(3) to dispel any ambiguity about the commencement date of sections 1, 2 and 7 of the Legislative Council (Amendment) Ordinance 2011 (which related to the compilation and publication of a precedence list). | Admin (para 5(c) of the minutes) |
| 013516 - 013921 | Chairman Administration SALA2 | Clauses 3, 5 and 6 <u>Clause 5</u> The Administration advised that it would consider Mr LAU Kong-wah's suggestion that the process through which the person became a Member under section 35B was to be regarded as a part of the result of a general election. On the proposed CSA to section 35A(1)(a) (now proposed section 35B(1)(a)), SALA2 suggested that for the sake of clarity, "or 72(1)" should be added after "15(1)". | Admin (para 5(d) of the minutes) |

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| | | <p><u>Clause 6</u></p> <p>The Administration advised that the proposed CSA to Clause 6 was no longer required.</p> | |
| 013922 - 015039 | Chairman Administration Dr Priscilla LEUNG | <p>Clause 7</p> <p>The Administration advised that in the proposed section 58B, subsections (8) and (9) would be removed because a by-election would be held if there was no precedence list.</p> | |
| 015040 - 015619 | Chairman Administration | <p>Clauses 8, 9, 10, 11 and 12</p> <p><u>Clause 8</u></p> <p>The Administration advised that the proposed CSA to Clause 8(3)(e) was no longer required.</p> <p>The Administration referred to the further proposed CSA to add a new subsection (6A) after subsection (6) under the proposed section 58B to the effect that if a precedence list published under subsection (1) was revised under subsection (6) or section 35B(7), the RO must, by notice in the Gazette, announce the revision and publish the list as revised. The Administration would propose a new CSA to amend Clause 12 accordingly.</p> | |
| 015620 - 015921 | Chairman SALA2 Administration | SALA2 suggested the Administration to consider refining the Chinese rendition of "precedence list" from "遞補順位名單" to "遞補名單" as the latter could reflect fully the meaning of the English term and was easy for people to remember. | Admin (para 5(e) of the minutes) |
| 015922 - 020057 | Chairman Dr Priscilla LEUNG | Dr Priscilla LEUNG reiterated her view that restriction of a Member who resigned and stood for election within a certain period of time did not contravene Articles 26 and 79 of the Basic Law ("BL"). | |
| 020058 - 021309 | <i>(The meeting was suspended at 11:00 am and was resumed at 11:15 am)</i> | | |
| 021310 - 021947 | Chairman Administration | <p><u>The Administration's paper on referendum and scope of application of replacement mechanism</u></p> <p>Briefing by the Administration on its paper [LC Paper No. CB(2)2222/10-11(01)]</p> | |

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| 021948 - 022328 | Mrs Regina IP Chairman Administration | <p>Mrs Regina IP suggested that the Administration should provide for a safety valve within the proposed replacement mechanism by, for example, giving discretionary power to the Chief Executive ("CE") to order a by-election to be held to fill a vacancy under certain circumstances.</p> <p>The Administration responded that for the sake of maintaining checks and balances, it was not proper to give the discretion to the Executive in deciding whether a by-election should be held for the constitution of the Legislature. It was considered more appropriate to leave the discretion to the Court.</p> | |
| 022329 - 023800 | Mr WONG Kwok-hing Chairman Administration Dr Priscilla LEUNG | <p>Mr WONG Kwok-hing restated his earlier view that situations such as death should be excluded from the application of the proposed replacement mechanism and a by-election should be conducted under such situations.</p> <p>Dr Priscilla LEUNG indicated that she might consider proposing CSAs to the effect that situations such as death and serious illness of a Member would be excluded from the application of the proposed replacement mechanism.</p> | |
| 023801 - 024319 | Chairman Mr Paul TSE Administration | Mr Paul TSE reiterated his view that the Secretary for Justice ("SJ") should give a response to the views of the Hong Kong Bar Association ("the Bar Association") given in its submission and statement. | |
| 024320 - 025214 | Chairman Mrs Regina IP Administration | <p>Mrs Regina IP reiterated her view about giving discretionary power to CE to order a by-election to be held to fill a vacancy under certain circumstances.</p> <p>Mr Paul TSE held the view that it would be more appropriate for the Court to determine whether a by-election would be held.</p> | |
| 025215 - 025542 | Chairman Ms Sophie LEUNG Administration | Mrs Sophie LEUNG raised concern that a candidate who had obtained only a few votes (and had his deposit already forfeited) might be returned as Member. | |

| Time Marker | Speaker(s) | Subject(s) | Action required |
|-----------------|---|--|---|
| 025543 - 034507 | Chairman Administration Mrs Sophie LEUNG Mrs Regina IP Mr Paul TSE Mr Abraham SHEK | <p><u>The Administration's response to the views of the Bar Association</u></p> <p>Briefing by the Administration on its paper [LC Paper No. CB(2)2214/10-11(01)].</p> <p>Members reiterated their views that SJ should respond to the views of the Bar Association, in particular its views in relation to the non-conformity of the Bill with BL26 and BL68.</p> | |
| 034508 - 034940 | Chairman Administration SALA2 | <p>Issuance of the Administration's written response [LC Paper No. CB(2)2214/10-11(01)] to the Bar Association</p> <p>Completion of the clause-by-clause examination of the Bill</p> <p>Verbal report to the House Committee</p> <p>Resumption of second reading on 13 July 2011</p> <p>Deadline for moving CSAs on 4 July 2011</p> | Clerk (para 6 of the minutes) |